AN ANALYSIS OF THE EFFECTS OF GLOBALISATION ON INVESTMENT LAWS AND POLICIES IN NIGERIA

B Y

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BEING A THESIS SUBMITTED TO THE POSTGRADUATE SCHOOL, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAW (LL.M.) DEGREE

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DECLARATION.

I declare that apart from references to other people's works, which have been duly acknowledged, this Thesis is the product of my research and it had not been previously presented in any application for another degree or diploma by any person.

....

Edeze Okecukwu G.C. **Date.**

CERTIFICATION.

This Thesis titled, "An Analysis of the Effects of Globalisation on Investment Laws and Policies in Nigeria" by Edeze Okechukwu George Chimere meets the regulations governing the award of degree of LL.M. of Ahmadu Bello University, Zaria, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION.

This Thesis is dedicated to my Parents, Late Chief Edeze Joseph Ugwuoke Omeje and Chief Mrs. Gladys Oyima Aleke-Omeje.

Acknowledgement.

My profound gratitude goes to God, for making my dreams to come true. I also thank my mother, who has been a source of inspiration and strength to me all these years with her unflinching support. I am equally grateful to my wife and children, Nnenna and Daberechi for their support and understanding.

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To God be the Glory.

Abstract

Globalisation dissolves political, social and economic boundaries and pools the world into a single entity. At the investment front, globalisation has forced nations to realign their investment laws with international trends so as to be integrated into the international financial highway. This Thesis essentially seeks to analyze the effects of globalisation on the investment laws and policies in Nigeria to determine the extent globalisation is reshaping and recasting Nigerian investment laws and policies and the merits or the demerits of such reformulation of the nation's laws and policies.

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7.	United Nations Resolution 1803 (xvii), 1962	85.

Abbreviation of Nigerian Law Reports.

Abbreviation	Meaning.
All NLR	All Nigerian Law Reports.
FSC	Selected Judgment of the Federal Supreme Court.
NLR	Nigerian Law Reports.
NWLR	Nigerian Weekly Law Reports.
SC	Supreme Court Reports.
SCNJ	Judgment of the Supreme Court of Nigeria.

Other Abbreviations.

Abbreviation	Meaning.
ABUJCL	Ahmadu Bello University Journal of Commercial Law
ABULJ	Ahmadu Bello University Law Journal
CBN	Central Bank of Nigeria
IBRD	International Bank for Reconstruction and Development.
ICSID	International Center for Settlement of Investment Disputes.
IDA	International Development Association.
IFC	International Financial Corporation
IMF	International Monetary Fund.
ISA	Investment and Securities Tribunal.
LFN	Laws of the Federation of Nigeria.
MIGA	Multilateral Investment Guarantee Agency.
MPJFIL	Modern Practice Journal of Finance and Investment Law.
SEC	Security and Exchange Commission
UNCTAD	United Nations Conference on Trade and Development.
WIPO	World Intellectual Property Organization.
WTO	World Trade Organization.

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CHAPTER ONE: INTRODUCTION.

1.1 Historical Background.

On the 17th day of August, 1998, the cash-strapped Russian government announced that it would devalue the nation's currency and default on part of its foreign debt. News of the decision rocked stock markets around the world. Within weeks the Dow Jones Industrial Average, a key index of the value of the New York Stock Exchange (NYSE), the world's largest, plunged 1,800 points. Just seven years earlier, in August 1991, a diehard band of hard-line Communists seized President Mikhail Gorbachev, of the former USSR, at his vacation home in the Crimea and attempted to take control of the government of the Union of Soviet Socialist Republic (USSR). For a while it seemed that the USSR, still a mammoth, nuclear- armed Super power was about to slide back into hard-line Communism. But if the world trembled, its stock market did not even notice. The NYSE barely moved on the news of the coup or the latter news of the coup's defeat.[1]

The above scenario would most likely compel one to ask but why would the world be affected or even care a hoot on the news of financial crises in Russia but chose not to bother, at least in financial circles, about the political crises involving the whole of the former USSR, a political confederation that later disintegrated to form about 15 countries of which Russia is but one. Some may try to locate the answer in timeline factor or may even reason that finance and politics are distinct and as such, it should normally not be expected that while the events of August 17, 1998 in Russia had a profound effect on the NYSE, being issues bordering on finance, that of August, 1991 being purely political in nature should concern NYSE.

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[1] Longworth, C.R. The New Global Economic Order. Article in the March 1999 edition of Encarta yearbook.

The author of the piece from which the above extract was sourced posed a similar question and he answers thus:

> The reason is the global economy. In 1991, the global economy was just emerging and held only a fraction of the power it commanded by decade's end. In 1991, too, the USSR was an isolated giant on the brink of collapse, barely in touch with the international economy through trade or investment. By 1998 Russia was deeply involved in the global economy, able to borrow worldwide but unable to pay its debts. When it finally caught cold, Wall Street Sneezed.[2]

In the years between 2004 and 2008, the Nigerian Stock Exchange (NSE) experienced an unprecedented growth with stock values rising in excess of 600% in some cases. For instance, Zenith Bank shares were sold for N16[3] a unit in 2004 but by May 2008 they were sold for N50[4] each.

However, with the economic recession in Europe and America setting in late 2007, by mid-2008 the same NSE experienced a sharp and calamitous decline both in the value of the stocks and volume of transactions on the floor of the exchange. In fact as at the time of research, the same Zenith Bank shares sell for less than N16 a unit[5]. Yet Zenith Bank, at least by official information is not in distress. The same is true of the price of the stocks of other companies quoted on the floor of NSE.[6]

It is only logical to say that the current happenings at the NSE are clear indications, and in fact, a confirmation that Nigerian economy has been tied to the

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[2] Ibid.
[3] Anonymous. Vanguard, Vol.20, No. 5647, Friday ,November 19, 2004.
[4] Anonumous. Financial Standard Vol. 9, No.149, Monday, May 19, 2008.
[5] Anonymous. Thisday, Tuesday, 27 April, 2010, Vol.15, No. 5483, P. 55.
[6] The present writer had cause to buy the shares of United Bank for Africa Plc. at ₦62.00 per unit on 26th May, 2008 on the floor of the Nigerian Stock Exchange but as at the time of research, the same Bank's share goes for just ₦13, yet the Bank is not distressed.

global economy after all. That Nigeria is no longer isolated, even if she were ever so. This is so even though some stakeholders at the NSE failed to locate the reason for the fall in prices of shares at the market to be the fact of Nigeria being a part of the globalised economy which was suffering a financial meltdown[7].

What the scenario as described points at is, "globalisation". The question is what then is globalisation? It is instructive that the term has no consensually accepted definition. It appears that academics, politicians, economists, and virtually every field of human endeavour has a definition for the term.

Thus, it has been said that globalisation has become a fashionable concept in the social sciences, a core dictum in the prescriptions of management gurus, and a catch-phrase for journalists and politicians of every strip[8]. It is widely asserted that we live in an era in which the greater parts of social life are determined by global processes, in which national cultures, national economies and national borders are dissolving[9]. This notwithstanding, it has been defined as "the process by which the experience of everyday life marked by the consumption of commodities and ideas, is becoming standardized around the world especially since the late 20th century".[10] It has also been defined as a "process of removing government-imposed restrictions on movements between countries in order to create an open, (borderless) world economy"[11].

It has been said that globalisation is not new, that for thousands of years, people – and later, corporations – have been buying from and selling to each other

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[7] Agbana, G. Stockbrokers Lists Causes of Market Meltdown. The Guardian Newspaper, p. 20, Vol. 26, No. 10,908, Friday, November 7, 2008.
[8] Hirst, P. and Thompson, G. Globalisation in Question: The International Economy and the Possibilities of Governance. Policy Press, Cambridge, United Kingdom, (2nd ed.) 1999. P.1.
[9] Ibid.
[10] The New Encyclopedia Britannica, vol.5 15th ed. Encyclopedia Britannica Inc. Chicago, 2003, page 304.
[11] Smith, M.K. (2002)"Globalisation and the incorporation of education" the encyclopedia of informal education, www.infed.org/biblio/globalisation.htm.

in lands at great distances, such as through the famed Silk Road across central Asia that connected China and Europe during the Middle Ages. Likewise, for centuries, people and corporations have invested in enterprises in other countries[12]. This notwithstanding, it is arguable that its effects are felt more today than in any other epoch.

In Nigeria, it can be argued that globalisation took effect from the mid-1980s, when the country altered her economic cum investment policies and laws to reflect the global trend towards opening up of economies. Prior to this period, the nation's investment laws and policies were in favour of protectionism[13]. This was particularly so from the early 1970s to mid-1980s, when the policy of structural adjustment was introduced. As a result, it is argued that our policies in relation to investment have undergone several phases of development which can be compartmentalized into three broad stages, viz: the period of liberalisation, then protectionism and back to liberalisation. The period between attainment of Independence to 1972 can be termed, the first phase of liberalisation. This was followed by the period of protectionism, which was between 1972 and 1986. This policy, which was vigorously pursued, was backed by several legislations, including the Nigerian Enterprises Promotion Acts[14] . The third period is the current one, which can be called, the second phase of liberalisation. This period started in the mid-1986 and it is still ongoing. Some of the laws enacted within the period to take care of the challenges of globalisation include, the Companies and Allied Matters Act[15], the Nigerian Investment Promotion Commission Act and the Investment and Securities Act[16].

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[12] Ibid.
[13] See Nigerian Enterprises Promotion Act of 1972.
[14] No. 4 of 1972, No. 3 of 1977 and No. 54 of 1989.
[15] Cap. C20 L.F.N. 2004.
[16] Caps.N117 and I24 L.F.N.2004 respectively.

These alteration of polices and legal regimes are basically in an effort to achieve economic growth and development. This is apparently in reaction to claims by proponents of globalisation , that relaxation of economic policies and the attendant back up with appropriate legal regimes will usher in an era of prosperity and economic emancipation by countries, especially the developing economies such as Nigeria. Thus, with the current policy of liberalisation, Nigeria has opened her investment doors to both domestic and foreign investors. It is the effects of these changes in policies and laws that this Thesis seeks to examine.

1.2 Literature Review.

Texts writing on the topic of this research are not common and where they exist, are often not comprehensively treated. In some cases, they are works that were produced over a decade ago. In situations like that, they certainly would not cover the developments in the relevant areas since their publications.

We acknowledge, with due respect, the works of learned authors in the area of interest. One of the available works is that of Jimoh, A.[17]. This work was published in 2002, about 10 years today. Apart from the fact of chances of some developments having taken place in the relevant area since 2002, the work did not treat some important aspects of this Thesis, namely: "globalisation", "Trends in Foreign Investment in Nigeria", as well as "Trends in Investment Laws and Policies in Nigeria". In fact, while this Thesis seeks to analyse the effect of globalisation on investment laws and policies in Nigeria and thereby determine its effect on the economy, Jimoh's work did not extend that far.

[17] Jimoh, A. Nigerian Investment Law and Business Regulations. Learned Publishments Limited, Lagos, 2002.

Another work reviewed is that of Igwe, J.U.K.[18] It is noted that the work, just like that of Jimoh, A.[19], did not extend to the analysis of such topics as "globalisation", and its effect on our laws and policies, nor did treat such sub-topics as the trend of foreign investment in Nigeria.

There are several other works, particularly, in journals that were reviewed as well. In this category is the work of Fabunmi, J.O.[20] This work was published in the 1990 edition of the journal cited. Owing to this, it is obvious that it did not treat any of the recent laws affecting investment in Nigeria[21]. Another work is that of Goubadia, D.A.[22] This work, basically, discusses statutory framework for facilitating foreign investment in Nigeria. In doing this, it fell short of the scope of this Thesis. Its area of concentration is but an aspect of this Thesis, and as such differs from it in scope, at least. This is not surprising bearing in mind that it is a work published in a journal and as such must have been constrained by space. This is so even as one recognizes that an academic work is not to be assessed simply by its volume.

In addition, the work of Odiase-Alegimenlen, O.A.[23] was also reviewed. The title of this work, "Implications and Challenges of Economic Deregulation for the Nigerian Capital Market", clearly shows that its scope is not as comprehensive as that of this Thesis. Thus, it does not cover the areas of interest in this Research. It

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[18] Igwe, J.U.K. Business-Government Relations in Nigeria: 1854-2003: Policies, Laws, & Institutional Frameworks. Law Development, Research, Publications and Consultancy, Lagos, 2002.

[19] Jimoh, A. op.cit.

[20] Fabunmi, J.O. Trade and Investment Legislation in Nigeria: A Review. Journal of Contemporary Legal Problems. November 1990, Vol. 1, No.7, pp. 51-69.

[21] These laws include Nigeria Investment Promotion Commission Act, and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act. These were enacted in 1995.

[22] Guobadia, D.A. Issues in Facilitating Foreign Investment for National Development in Nigeria. MPJFIL, October 1998. Vol.2, No. 4, pp. 38-55.

[23] Odiase-Alegimenlen, O.A. Implications and Challenges of Economic Deregulation for the Nigerian Capital Market. MPJFIL, January, 1998, Vol.2, No.1, pp. 85-106.

is the same with the work of Akpotaire, V.[24] which was equally reviewed. With due respect, this work, a nice one and recent too, lacks some vital aspects of this Thesis. These are such issues as "globalisation" as well as "trends in foreign investment in Nigeria". The work of Yerokun, O.[25] is a 1992 work and as such, suffers the same fate with that of Fabunmi[26] in that it predated some of the relevant laws to the topic of this Thesis. Although, research yielded another work by the learned author[27], however, its scope is limited to the analysis of the Nigerian Investment Promotion Commission Act. This Act, with due respect, is just of one the several laws that affect investment in Nigeria. This is similar to the work of Iloba-Aninye[28]. This work, though a recent one, only treats an aspect of a sub-topic of this Research.

In the circumstances, research reveals that the topic of this Thesis has not been comprehensively treated and there follows the need for a work in this area of the law.

1.3 Problems of the Research.

Arising from the Literature Review in 1.2 above are the following problems.

Firstly, whether globalisation has affected Nigeria's laws and policies and if yes, to what extent has it done so?

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[24] *Akpotaire, V. The Dynamics of the African Alternative to the Structural Adjustment Programme and the* Promotion of Foreign Investment in Nigeria: A Postscript. In: ABUJCL, 2006-2007. Vol.3, No. 1, pp 20-37.

[25] Yerokun, O. The Changing Investment Climate through Law and Policy in Nigeria. In: Okonkwo, C.O. (ed.) Contemporary Issues in Nigerian Law. Essays in Honour of Judge Bola Ajibola, 1992, pp.219-248.

[26] Fabunmi, J.O. op.cit.

[27] *Yerokun, O. The Nigerian Investment Promotion Commission Decree- An Overview. Nigerian Law and Practice* Journal. March, 1998. Vol.2, No.1, pp.156-168. This Decree is now an Act of Parliament known as Cap. N117 L.F.N. 2004.

[28] Iloba-Aninye, O. Regulation and adjudication of Disputes in the Securities Business: A case Against Statutory Constraints in Nigeria. ABULJ 2006-2007. Vol.25-26, pp.99-111.

Secondly, what is the impact of globalisation on the level of foreign investment inflows to Nigeria? This issue becomes necessary in view of the perception that globalisation enhances foreign investment inflows across the globe.

Thirdly, if there are benefits accruing from globalization, what Nigeria should do to enjoy those benefits, if she has not been so benefitting and if she has been benefitting, what should be done to consolidate such benefits. On the other hand, if there are no accruable benefits, what should the country do to stop further engagement in the phenomenon?

These are some of the problems of this research that are proposed to be investigated.

1. 4 Aims and Objectives.

The objective of this research is to find solutions to the problem of research contained in 1.3 above. Accordingly, the objective of this Thesis is as follows:

First, the extent to which globalisation has affected the country's laws and policies and whether our policy formulators take our peculiar circumstances into consideration in their bid to comply with the dictates of the various economic organizations to which our country belongs. This is in view of the function of law as an instrument for national development as well as social engineering. Thus, laws are normally enacted and policies formulated to achieve set goals. On the other hand, goals are normally set with the peculiar circumstances of a given society in mind.

Secondly, the impact of globalisation on the level of foreign investment inflows into Nigeria. This issue becomes necessary when it is borne in mind that the major reason behind liberalisation of the country's economic environment was

the quest to attract foreign investment both in the form of direct and portfolio investments.

Thirdly, the role of globalisation on Nigeria's economic growth and development. This arose as a result of claims by the supporters of economic globalisation that globalisation brings about economic growth and development which translates into an enhanced standard of living and general well being of the people.

1.5 Scope of the Research.

The scope of this work is determined by the statement of the problem and the objective of research. Accordingly, issues such as those raised in 1.3 above will constitute the areas of interest of this work.

1.6 Research Methodology.

The research method to be used in this research would be essentially doctrinal. It is to be conducted, mainly, in the library through the use of both primary and secondary sources of law in the nature of statutes, case laws, text books, works on cases and materials, journals, law reviews, articles, newspapers and so on. These include materials sourced from the internet.

Secondly, classroom lectures as well as public lectures touching on the subject matter would be put in use. This is in addition to empirical methods which will also be made use of where necessary. It is also to be noted that the present writer's personal experience could be employed where necessary in furthering the goal of this Thesis.

1.7 Justification.

This work is justified by the statement of the problem, the objective of the research as well as the relevance of the subject of research to scholars, law students, legal practitioners, members of the Bench and the investing public.

1.8 Organizational Layout.

Chapter one is the introductory chapter dwelling on historical background, literature review, problems of the research, scope, research methodology, justification and organizational layout. Chapter two deals with the concept of globalisation, agents of globalisation, arguments about globalisation, and the effects of globalisation on the Nigerian economy.

Chapter three focuses on trends in foreign investment in Nigerian. It deals with foreign direct investment, forms of foreign direct investment, foreign direct investment inflows to Nigeria from 1970 to the present era, foreign portfolio investment, portfolio investment in Nigeria from 1986 to the present era, benefits of foreign portfolio investment, negative effects of portfolio investment, and determinants of foreign investment.

Chapter four dwells on trends in investment laws and policies in Nigeria, treating such sub-topics as immediate post-independence era, the period of indigenization and protectionism, the era of deregulation and liberalisation, entry requirements for investing in Nigeria, participatory requirements, requirement for technology transfer and skill acquisition, protection of investor's property in Nigeria, protection of intellectual property, incentives for investors, privatization and commercialization as consequence of globalisation, and dispute resolution mechanism, Chapter five is the concluding chapter summarizing the work, making findings and recommendations.

CHAPTER TWO: CONCEPT, AGENTS, IMPERATIVE AND EFFECTS OF GLOBALISATION.

2.1 Meaning and Thrust of Globalisation.

Globalisation has been defined, broadly, as "an increase in the impact on human activities of forces that span national boundaries"[1]. Furthermore, it is said to be "the process of increasing interconnectedness between societies such that events in one part of the world more and more have effects on peoples and societies far away"[2]. These activities can be economical, social, cultural, political, technological or even biological, as in the case of disease[3]. This shows that there are several aspects of globalisation. However in this Thesis, our focus is on one of these aspects, economic globalisation. As such, we will concern ourselves with the definitions that border on that aspect.

Economic globalisation has been defined as, "the rapid integration of trade relations and production and investment decisions across the globe by the economic agents who employ and move investment capital and technology around to take advantage of environment where their competitive edge can manifest in high returns"[4].

It has been asserted that the last few decades have witnessed the growing impact of an increased global integration of trade and capital flows, ably assisted

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[1] *Goldin, I. and Reinert, K. Globalisation for Development: Trade, Finance, Aid, Migration and Policy. World Bank and Palgrave Macmillan, New York, 2007, p.2.*

[2] Baylis, J. and Smith S. The globalisation of world politics: An Introduction to International relations. Oxford, University Press, P.7 cited in Girigin, B.K. Globalisation

[3] Goldin, I. and Reinert, K. op.cit.

[4] Odozi, V.O. Keynote Address presented at the In-House Seminar on Trends in globalisation of the world Economy and Implications for Nigeria, for CBN Executive Staff, held in Kaduna, from 31st August to 4th September, 1998. It is also found in CBN Economic and Financial Review, vol.36, No. 4, 1998. p.330.

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by an equally, rapid growth of information technology.[5] This is in line with the popular account which is to the effect that globalisation is a recent phenomenon. This argument has however been countered by some who insist that, in some important respects, it is not new[6]. It is their view that there had been integration of peoples and societies around the globe, even though, the process sometimes encountered challenges due to changes in policy, institutions or cultural preferences which had restrained or even reversed it in some cases. They say that in the 15th century, for instance, the Chinese Emperor, Hung-his, banned maritime expedition, slowing down Asian globalisation considerably. Similarly, the proliferation of nation states and the imposition of border controls in the 20th century presented new obstacles to the movement of goods, capital, persons and ideas among the countries of the world[7].

In modern times, however, economic historians date the modern era of globalisation to approximately 1870. The period from 1870 to 1914 is considered by them to be the birth of the modern world economy, which by some measures was as integrated as it is today. In support of this assertion, the words of John Maynard Keynes, who wrote in 1919, are often cited. He described this period as follows:

> The inhabitants of London could order by telephone, sipping his morning tea in bed, the various products of the whole earth, in such quantity as he might see fit and reasonably expect their early delivery upon his doorstep; he could at the same moment and by the same means adventure his wealth in the natural resources and new enterprises of any quarter of the world, and share, without exertion or

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[5] Kwanashie M. The concept and process of Globalisations. A paper presented at the In-House Seminar Seminar on Trends in globalisation of the world Economy and Implications for Nigeria, for CBN Executive Staff, held in Kaduna, from 31st August to 4th September, 1998. It is also found in CBN Economic and Financial Review, vol.36, No. 4, 1998. Pp. 340-351 at p. 342.

[6] Goldin, I. and Reinhert, K. op.cit,

[7] Ibid, p.5-6.

> even trouble, in the prospective fruits and advantages; or he could decide to couple the security of his fortunes with the good faith of the townspeople of any substantial municipality in any continent that fancy or information might recommend. He could secure forthwith, if he wished it, cheap and comfortable means of transit to any county or climate, without passport or other formality, could dispatch his servant to the neighbouring office of a bank for such supply of the precious metals as might seem convenient, and could then proceed abroad to foreign quarters without knowledge of their religion, language or customs, bearing coined wealth upon his person and would consider himself greatly aggrieved and much surprised at the least interference. But, most important of all, he regarded this state of affairs as normal, certain, and permanent, except in the direction of further improvement, and any deviation from it as aberrant, scandalous and avoidable[8].

At this period, the global integration of capital markets was facilitated by advances in technology which resulted in rail and ship transportation as well as in telegraph communication. European colonial systems were at their highest stages of development and migration was at a historical high point in relation to the global population of the time[9]. This period is thus, termed the first stage of modern globalisation[10].

The second stage of globalisation began at the end of the second World War. The end of the war was accompanied by a global economic regime developed by the Bretton Woods Conference of 1944, establishing the International Monetary Fund (IMF), World Bank, and the General Agreement on Tariffs and Trade (GATT)[11]. It ended in the mid-1970s. This was followed by the third stage, which is the current stage. It started from the mid 1970s and it still subsists. It followed the demise of monetary relationships developed at the Bretton Woods Conference

[8] Ibid, p.7.
[9] Ibid, p.6.
[10] Ibid.
[11] Ibid.

and involved the emergence of the newly industrialized countries of East Asia, especially Japan, Taiwan (China), and the Republic of Korea[12].

This stage being the extant stage of globalisation is the one that is of interest to us in this Thesis. As with most phenomena, however, globalisation did not just happen, rather it involves a process and it is also spread by some factors or agents.

2.2 Agents of Globalisation.

Globalisation as a phenomenon did not happen by chance, it has been said. It is rather a result of deliberate efforts of institutions, governments, as well as business organizations employing such things as persuasions, policies, businesses and technology. Thus it can be argued that these are agents of globalisation, given their roles, in its spread, both individually and collectively. These agents will now be discussed.

2.2.1 Institutional Agents.

Institutional agents of globalisation are those institutions or bodies that are not only global in nature but also play significant roles in the spread of globalisation. For our purpose here, the terms refer to such bodies as the World Bank (WB), the International Monetary Fund (IMF), and the World Trade Organization (WTO). These institutions, in one form or another promote the principles of liberalisation and *laissez faire* market paradigm and give high priority to commercial interests and have, in the process assumed the role of leading the

[12] Ibid, p.7.

globalisation of economic policy-making[13]. They have become major makers of a wide range of economic policies that were traditionally under the purview of national governments.[14] The collaboration of IMF with such bodies as WTO and the World Bank, for instance, can be seen in their respective Articles of Agreement. Article X of the IMF's Articles of Agreement calls for the IMF to cooperate with any general international organization and with public international organizations having specified responsibility in related fields. In like manner, Article III.5 of the Marrakesh Agreement establishing the WTO specifically calls for the WTO to cooperate with the IMF and the World Bank. The Bretton Woods Institutions (World Bank and IMF), for example, are charged with the maintenance of macro-economic balances and sustainable rate of global economic growth and development as well as the promotion of an orderly payment system. These bodies will be discussed accordingly.

(i) World Bank.

The World Bank (the Bank) is a global institution of 187 member countries, Nigeria inclusive. It functions as a group with five members: International Bank for Reconstruction and Development (IBRD); International Development Association (IDA); International Finance Corporation (IFC); International Centre for the Settlement of Investment Dispute (ICSID); and Multilateral Investment Guarantee Agency (MIGA). Through these five members, the group plays a significant role in the process of globalizing the world, economically, and this can be gleaned from their individual Articles of Agreement.

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[13] Obadan, M.I. and Obioma, E.C. Contemporary Issues in Global Trade and Finance and their Implications. Journal of Economic Management. National Centre for Economic Management and Administration. Vol. 6, No. 1, January 1999, p. 1-39 at p. 10.

[14] Ibid.

In the first place, the IBRD promotes globalisation by promoting private foreign investment by means of guarantees; or participation in loans and other investments made by private investors. In addition, where private capital is not available on reasonable terms, it can provide finance for productive purposes out of its own capital, funds raised by it and other resources[15]. The purpose of IDA is similar to that of IBRD and as such also promotes globalisation[16]. On the other hand, IFC promotes globalisation through encouragement of the growth of productive private enterprise in member countries, particularly in the less developed areas. In carrying out this purpose, it assists in financing the establishment, improvement and expansion of productive private enterprises as well as stimulates and helps create conditions conducive to the flow of private capital, domestic and foreign into productive investment into member countries[17].

The ICSID provides facilities for the conciliation and arbitration of disputes between a member country and investors who qualify as nationals of other member countries[18]. In effect, this body drives globalisation through its provision of a platform through which investors from member countries are protected from actions of host countries that they may complain against. As to MIGA, it drives globalisation by its function of guaranteeing investment loss resulting from expropriation, breach of contract, revolution, sabotage, war, civil disturbances, insurrection, and terrorism by or in host country. It promotes Foreign Direct Investment (FDI) into developing countries and acts as a potential deterrent against

[15] Article 1(ii) of IBRD Articles of Agreement.
[16] Article 1 of IDA Articles of Agreement.
[17] Article 1 of IFC Articles of Agreement.
[18] Articles 1(2) and 25 of the ICSID Convention, Regulations and Rules.

government actions that may adversely affect foreign investors and their investments[19].

(ii) International Monetary Fund.

On the other hand, it is discernible that the International Monetary Fund (IMF), through its purpose Article, facilitates processes leading to globalisation. Article 1 of the Fund provides, among others, the following:

a. To promote international monetary co-operation through a permanent institution which provides the machinery for consultation and collaboration in international monetary problems;

b. To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy;

c. To promote exchange stability, to maintain orderly exchange arrangement among members, and to avoid competitive exchange depreciation; and

d. To assist in the establishment of a multilateral system of payment in respect of current transactions between members and in the elimination of foreign exchange restriction which hamper the growth of world trade;

With its 181 members, including Nigeria, IMF tremendously contributes to the process of globalisation. This is particularly so when it is borne in mind that member countries are expected to abide by the rules of the organization.

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[19] Articles 2 and 11 of the MIGA Convention.

(iii) World Trade Organisation (WTO).

The WTO, of which Nigeria is a member, has 153 members which accounts for 97% of world trade[20]. It is a relatively new organization that replaced the General Agreement on Tariffs and Trade (GATT) on the 1st of January, 1995. Its primary function includes the supervision and liberalisation of international trade. It does this by several ways including:

i. Negotiating the reduction or elimination of obstacles to trade, and agreeing on rules governing the conduct of international trade;
ii. Administering and monitoring the application of the WTO's agreed rules for trade in goods, trade in services and trade-related intellectual property rights;
iii. Monitoring and reviewing the trade policies of her members, as well as ensuring transparency of regional and bilateral trade agreements; and
iv. Settling disputes among her members regarding the interpretation and application of the agreements.[21]

The provisions for cooperation between WTO, World Bank and IMF, suggests that the three are the prominent agents of globalisation. The achievement of "greater coherence" in global economic policy-making requires the subjection of trading countries to rules and discipline determined by these three international economic organizations which severely limit the exercise of national sovereignty over economic matters[22].

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[20] http://www.wto.org. sourced on 3rd of March, 2011.
[21] http:// www.wto.org/. The WTO-a statement by the Director-General. Sourced on 3rd March, 2011.
[22] Ibid.

2.2.2 Technology.

Technology is playing a very vital role in the current process of globalisation. It has been argued that since the industrial revolution of the 18th and early 19th century, technical innovation have led to an explosion of productivity and slashed transportation costs. That discoveries such as electricity, the telephone, the automobile, containerships and pipelines altered production, communication and transportation in ways unimagined by earlier generations[23]. Recent developments in chemicals, electronics and telecommunications now make it possible for a resource poor country like Japan to have comparative advantage and specialize in the production of a wide range of goods. This is made possible by the fact that the major determinant of comparative advantage now is technological innovation which is now a product of scientific research as against the received theory postulation of comparative advantage being a product of resource abundance. It is therefore the practice for a Transnational Corporation (TNC) based in Europe or America to make use of its secret production processes to produce goods in factories located in such pacific Rim-countries as Singapore, Taiwan, Thailand and Indonesia, where they have economic advantages.This is particularly the case with information Technology (IT) especially in the current wave of globalisation, which is highly information based[24].

IT combines progress in electronics, computing, and telecommunications to come up with a highly dynamic process of storing, processing, transmitting and presentation of information[25]. As a result of this development, countries are now in a better position to respond speedily to changes in demand patterns and changes in international comparative advantages. The emergence and rapid expansion of the

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[23] Anonymous . UNCTAD: Globalisation and Trade. United Nations, Geneva, 1998, p.35.
[24] Kwanashie, M. *op.cit.*, p.342.
[25] Ibid, P.343.

information super highway has brought to the doors of people, all over the world, information which has become a vital factor in daily decision making. Individuals and organizations are now realizing that they do not have to be physically present in any part of the world from any given location.

IT has opened great opportunities for the exploitation of economies of scale and scope, making for rapid growth and conferring comparative advantages to those with access to it. It is promoting the internationalization of production and markets, which is central to the globalisation process. Today, information system developments are constantly being applied to wide areas of the economy. They are responsible for the increased productivity, quality and efficiency of a number of sectors[26].

Globalisation of finance, for instance, has been spurred by improvements in technologies for collecting, processing and disseminating information. Thus, globalisation of national economies, opening of domestic financial and capital markets, the liberalisation of capital account transactions, competition among the providers of intermediary services, and increased private savings for retirement which has stimulated financial innovation and created a multi-dollar pool of internationally mobile capital, are all the effects of developments in technology, particularly, IT[27]. New global communications technology has facilitated the globalisation of capital flows in terms of scope and intensity. Worldwide, computer links enable investors to access information on asset prices at minimal cost on a real time basis, while increased computer power enables them rapidly to calculate correlations among asset prices and between asset prices and other variables. It also, enables investors to follow developments affecting foreign

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[26] Ibid.
[27] Obadan, M.I. Op. cit. p. 5 -6.

countries and companies much more efficiently. And very importantly, the various technological developments have brought significant reductions in transactions cost including transport costs and communication costs.[28]

In this regard, powerful and irreversible changes in technology have made capital, other factors of production, as well as goods and services highly mobile and thereby, facilitate globalisation.

2.2.3 Multinational Corporations.

The Multinational Corporations (MNCs) are also potent instruments of global trade and capital flows through their worldwide network of operations, advanced technology, expertise and vast financial resources. These MNCs being business organizations influence globalisation through their business operations. They establish business units virtually in every part of the globe and in like manner, engage in financial transactions. One of the major ways through which they globalize the world economy is by establishing foreign direct investments (FDI) around the world. Globally, there are not less than 77,000 MNCs with hundreds of thousands of affiliates, employing about 6,000,000 people[29]. The rate of spread of FDI is indicative of how much these corporations influence globalisation. With the collaboration of national governments, MNCs are increasingly spreading FDI both in number and value. In this regard, it is noted that, these conscious and positive actions of governments as well as MNCs have progressively increased the level of FDI globally such that from the 1990s, global FDI flows have accelerated tremendously. Whereas it increased from US$59

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[28] Ibid.
[29] UNCTAD: World Investment Report (overview), p. 1.

billion in 1982 to US$203 billion in 1990, four times higher than the 1982 level, by 2000, it had reached US$1491.9 billion, or 15 times higher than the 1982 level[30]. This global spread of FDI continues[31].

Most recently, Nigeria has also contributed significantly to the growing importance of intra-African investment, even in portfolio investment. As a result of the consolidation of the Banking Sector in Nigeria in 2005, the country now has financial institutions that are solid enough to seek opportunities for expansion across Africa and beyond. A few Nigerian banks have opened branches in European and American financial centres in recent years. However, it is remarkable that their expansion occurred more in Africa, where Nigerian banks have acquired interests in several countries throughout sub-Saharan Africa, mainly through mergers and acquisitions[32]

2.2.4 Sovereign Governments.

Governments all over the world are increasingly influencing the process of globalisation. They do this through removal of trade barriers, dismantling of exchange control legal regimes, and adopting policies that are favourable to foreign investment. This is more so with those countries which are members of the major global economic organizations, that is, the World Bank, International Monetary Fund, and the World Trade Organisation. This is because as a member, a country, particularly a developing one, cannot afford not to carry out the dictates of any of the organizations of which she is a member. Even where a country is not a

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[30] Anonymous. Annual Review of Developments in Globalisation and Regional Integration in the Countries of the Economic Commision for Western Asia(Summary).United Nations, Gneva, 2002, p. 2.
[31] Ibid.
[32] Anonymous. Strengthening Regional Economic Integration for Africa's Development: Economic Development in Africa. (UNCTAD Report). United Nations, Geneva, p. 58.

member of any of these organizations, that county may, nevertheless, belong to one or more of several regional economic organizations around the world. In this case, that country stands to be indirectly bound by the rules of the larger global economic organization as other members of the regional group may belong to a global organization whose rules they are bound to comply with, irrespective of their membership of the regional body. In fact, IMF forbids its members to engage, cooperate or relate with any non-member or with persons in a non-member territories in such a way that will be contrary to the provisions of her Articles of Agreement[33].

Moreover, supporters of globalisation have argued that globalisation has come to stay because every nation now lives in a global economy in which flows of trade, capital and knowledge across national borders are not only large, but also are increasing every year. That any country that is unwilling to engage with others risks falling farther behind the rest in terms of both income and human development.[34] With this kind of argument, which is not far from the reality, one can see why virtually every nation is, in one way or another, part of globalisation.

Consequently, Countries have been doing much to see that policies which encourage globalisation, through FDI and in fact, other forms of investment are consolidated. To this end, the Group of twenty (G-20) members[35] in their 2nd April, 2009 summit pledged to maintain an open trade and investment regime and to avoid a retreat into protectionism, and while pledging to take whatever steps they can to

[33] Article XI (i) of Articles of Agreement of IMF.
[34] Girigiri, B.K. Globalisation and Industrial Relations in Nigeria, Evidence from 1986 to 2006. Labour Law Review. Nigeria Journal of Labour Law and Industrial Relations. Vol. 1, No. 2, April, 2007, 89 – 107 at p. 91 -92.
[35] This is a group of twenty countries comprising both Industrial and Emerging-market countries whose mandate is mainly the promotion of open and constructive discussion on key issues related to global economic stability. The members are: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, Republic of Korea, Turkey, United Kingdom, United States of America and the European Union.

promote and facilitate trade and investment, also called on the World Trade Organization, together with other international bodies to, within their respective mandates, monitor and report publicly on the G.20 members adherence to these undertakings on a quarterly basis[36]. It is important to note that the members of the G-20 collectively accounted for 86 percent of the global inflows of FDI in 2007 - 2008[37]. In some cases, regional economic bodies desirous of attracting more FDI into their regions adopt some policies that could enhance the inflows of FDI in their respective regions. An instance of these regional bodies is New Partnership for Africa's Development (NEPAD).

As evidence of the high rate of policy changes by countries in favour of globalisation through foreign investment, UNCTAD reports that between July and November, 2009, 51 countries worldwide made changes to their policy frameworks affecting investments and that majority of these policies were in the direction of liberalisation, promotion, and facilitation of foreign investment[38].

2.3 Arguments about Globalisation.

Globalisation as a phenomenon has not been accepted by all as being beneficial to all in the same degree. Thus, there are arguments to the effect that globalisation is full of benefits and that even if there have been negative experiences caused by the process of globalisation, the benefits outweigh whatever harm it causes. On the other hand, those in opposition are of the view that globalisation causes more harm than good and as such, the process should be

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[36] Anonymous. Investment Policy Development in G-20 Countries. UNCTAD Secretariat, Geneva, 2009. See also http://www.unctad.org.

[37] Ibid.

[38] Anonymous. Investment Policy Monitor. UNCTAD, Geneva, December 209, No. 1, p.1.

discouraged even if not completely put to a stop. These two broad opinions are to be discussed seriatim.

2.3.1 Arguments in Favour of Globalisation.

In the opinion of the supporters (globalists), globalisation makes it possible for all nations to benefit from interdependence.[39] It is their view that globalisation has ushered in economic and social development and as a result, there is currently an unprecedented growth in global output and real per capital income further resulting in major improvements in literacy, life expectancy and general human welfare[40]. It is also their argument that the trend towards more integrated world markets and economies has opened a wide potential for greater growth and presents unparallel opportunities for developing countries that are prepared to raise their standards of living. That over the last 30 years, greater integration into the world economy through trade has allowed a significant number of developing countries to partake in the opportunities and benefits of globalisation to develop their comparative advantages and gain access to newer, more appropriate technology, while financial liberalisation has increased their access to international private capital, permitting them to realize much higher rates of economic growth[41].

In this respect, it is said that prior to globalisation, many developing countries, particularly in African, were mismanaged thereby causing a total destruction of incentive structure, distortion of investment choices, neglect of

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[39] Kwanashie, M. op. cit. at p. 348

[40] Kohler H. How to work for a better Globalisation cited in Okogbule, N.S. Globalisation, Economic Soverieignty and African Development From Principles to Reality.

[41] Obadan, M.I. and Obioma, E.C. op. cit., at p. 2.

essential social services, widespread corruption, weakened competitiveness and unsustainable external debt[42].

It is as well the arguments of the globalists that globalisation has brought about increased specialization and efficiency, better quality products at reduced prices, economies of scale in production, competitiveness and increased output, technological improvements and increased managerial capabilities. That it has brought an increase in world trade and output which in turn ensures that consumers derive the best satisfaction since the best of standards of quality are maintained through specialization and competition[43]. The above constitutes some of the arguments of those in support of globalisation. In view of all these, it has been suggested that in order to enjoy the benefits of globalisation and even more, developing countries, particularly the African countries, may have to do the following:

(i) develop a strong production base predicated on value added products and opening up of their economies through adopting and maintaining liberal trade and investment regime;

(ii) diversify export structures and developments of manufacturing export capability;

(iii) develop adequate human and institutional capacity, physical infrastructure, and access to markets, capital and technology that are necessary for integration into the world economy;

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[42] Asekunowo, V.O. what Economic Gains has Nigeria Received from Globalisation so far. International Journal of Business & Common market studies vol. 2, Nos. 1 & 2, 2004, pp. 53 – 62, at p. 54.

[43] Obaseki, P.J. Globalisation and the Nigerian Economy In: CNB Economic and Financial Review. Vol. 38, No. 2, June, 2000, pp 17 -33 at p. 24

(iv) design and implement sound economic policies that would sustain the confidence of financial markets and measure up to the increasingly stiff competition in trade and;

(v) develop and operate within the framework of strong regional and sub-regional economic groupings, such as the ECOWAS, as a credible response to the powerful force of globalisation[44].

2.3.2 Arguments Against Globalisation.

There are contentions by the anti-globalisation group or "globaphobes" (as they have been called by a writer[45]), that globalisation, among others, only makes rich nations richer and the poor ones poorer. They then went on to outline some of their points, which include that:

(i) the globalisation thesis as a whole stands at odds with the realities of the world. And that it is an "ideological construction" propounded to justify and to perpetuate relations of exploitation and also to contain collective resistance from below;

(ii) globalisation has contrary to delivering "more for all" and the Third World poor benefiting most, as assumed by its advocates, engendered rapid global inequality over the past 30 years; it has consigned some regions of the world, particularly Africa, to "economic wasteland". Therefore, under globalisation, the human experience far from being universalized has become more differentiated than ever and that, the recent phase of the global

[44] Obadan, M.I. and Obioma E.C.Op. Cit. at 6 -7.
[45] Asekunowo, V. O. op. cit.,at p. 53.

advancement has unleashed increased suffering and uncertainty far beyond the Great Depressions of the 1920s and 1930s;

(iii) it is not the case, in reality, that there is general capital flows worldwide as a result of direct investment by companies and individual entrepreneurs, of activities on stock markets and commodity exchange, and of initiatives taken by banks and financial houses, as alleged by globalisation theory;

(iv) global investment reveals uneven development because Foreign Direct Investment (FDI) enters just a handful of economies. Besides, Multinational Corporations (MNCs) have clear regional bases and they consider few Third world countries for long-term investments;

(v) in response to the dictates of globalisation as enunciated by the International Monetary Fund (IMF), African countries have engaged in adjustment programmes but instead of achieving economic growth, experienced economic crises; and

(vii) globalisation entails a chain of class exploitation. Such that increased internationalization of capital has created close relationships between the subordinate ruling classes of Africa, Asia and Latin America, and those of the core centres of capitalist world power. This has however, created crises in diverse areas, which include struggles from below, in an ever increasing manner[46].

From the perspective of African countries, specifically, it has as well been argued that African economies have been characterized by low rates of domestic savings and investment, endemic poverty, excessive dependence on commodities, series of policy errors and heavy external debt obligations. Further, that Sub-

[46] Girigiri, B.K. op cit at p. 93-94.

Saharan African countries are among the most indebted of the developing countries considering standard debt indicators and income levels, such that statistically, in year 2000, out of 34 countries classified by the World Bank as severely indebted low income countries, 28 were in Africa. These countries are characterized not only by low per capita incomes, but also by low social indicators (high illiteracy, infant mortality, poor health, etc), poor investments and low economic diversification[47].

In addition, it has equally been argued that globalisation of finance, in particular, carries a very large risk which includes the fact that instability in one country can almost spread instantly to others[48].

This assertion finds justification in the case of the Nigerian Stock Market, which crashed following the global financial meltdown that originally started in Europe and America in 2007. The financial crises eventually spread to every part of the globe, courtesy of globalisation of finance. In the same vein, the financial crises associated with capital flows that hit Latin America in the 1980s, Mexico in 1994 and East Asia in 1997 – 98 were all traceable to globalisation[49].

Another point against Globalisation is its effects on Sovereignty of nation states. It has been argued that globalisation has eroded national sovereignty and narrowed the ability of governments and people to make choices from options in economic, social and cultural policies. That national policy making has equally been globalised as a result of certain developments including the activities of global institutions such as the World Bank, International Monetary Fund and the World Trade Organization.[50] According to Martin Khor, most developing

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[47] Obadan, M.I. and Obioma, E.C. op cit., at p. 3 -4.
[48] Obadan, M.I. Op cit, p.13.
[49] Ibid.
[50] Ibid.

countries have seen their independent policy- making capacity eroded and have to adopt policies made by other entities which may on balance be detrimental to the countries concerned[51]. This view has also been re-echoed by Mofale Tsele[52] when he said that,

> A significant feature of globalisation is the erosion of the power of the nation state. Whereas the state used to be a strong socio-political institution, it has now been weakened and incapacitated from fulfilling its traditional mandate for 'common good for its citizenry'... At the end of the day, in the face of globalisation, the rest of Africa become independent by name only, rendering even the notion of national sovereignty and democracy empty of meaning. We may have won liberation which amounts to nothing than the hoisting of flags, singing our own national anthem and putting in the State house our national leaders. Everything else is lost.

These statements can hardly be faulted when it is borne in mind that the economic policies of the globalised world, particularly in less developed countries, are determined by such bodies as IMF, WTO, World Bank and other global and regional economic blocks, such as the NEPAD, ECOWAS, G-20, MNCs, and so on.

With this situation in mind, it is not surprising that globalisation has been likened to colonialism, neo-colonialism and slavery by a learned writer[53], who further said that "globalisation destroys incentive in developing countries because while developing countries have to open their borders for imports, they don't (sic)

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[51] Khor, M. Globalisation and the South: Some Critical Issues, Ibadan, Spectrum, 2001, p. 4, cited in Okogbule, N.S. op cit, p. 176.

[52] Tsele, M. Come, Let us Re-build: challenges of Globalisation for African Economic Justice. A paper presented at the 8th General Assembly of the African Conference of Churches held at Yaonde, Cameroun, from 22nd – 27th November, 2003, p. 7 .

[53] Agabi, K. SAN

have the means to produce to prescribed standard and export to the developed nations"[54].

The anti-globalists also say that globalisation has brought about serious damage to the environment. It is their argument that because Multinational Corporations (MNCs), have significant financial, political and negotiating power, they can get away with causing a lot of damage to the environment, particularly in developing countries that are trying to attract foreign direct investment (FDI). It is said that one of the reasons why MNCs chose to locate production facilities in developing countries is that these countries have less stringent environmental damage requirements. In this regard, they argue that in some cases, the governments of these developing countries would be willing to even inflict damage on the environment in an attempt to attract FDI. An example in this case is a 1995 advertisement in which the government of the Philippines declared its willingness to "fell (*sic*) mountains" "raze jungles", "fill swamps". "move rivers" and relocate towns" to please investors"[55] .

This issue of environmental damage is rife with the operations of Oil prospecting companies in the Niger Delta region of Nigeria. It is known that oil spills, which occur in the region, have caused substantial damage to farmlands, fishing waters and other aspects of the environment[56]. In recognition of the potential threat by the operations of the MNCs to the environment, the Organisation of Economic Co-operation and Development (OECD) urges MNCs to take due account of the need to protect the environment, public health and safety

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[54] Cited in Okogbule, N.S. op. cit, p. 180.
[55] Ibid, p.94-95.
[56] Bello, A. environmental Rights in Nigeria: Issues, Problems and Prospects. Igbinedion University Law Journal, Vol.4,
January, 2006. pp. 60-95 at p. 61.

and to conduct their activities in a manner contributing to the wider goal of sustainable development.

Specifically, the OECD's guidelines on the environment encourage MNCs, among others to:

(i) provide information on the potential environmental impact of their activities;

(ii) consult with the communities affected directly by the environmental policies; and

(iii) maintain contingency plans for preventing, mitigating, and controlling serious environmental damage[57]. All these go to support the claims of the anti-globalisationists that MNCs and their supporters, the IMF; WTO; and the WorldBank, cause great environmental damage through globalisation.

2.4 The Effects of Globalisation on Nigerian Economy.

The globalisation process, it must be mentioned, has not been rosy with the economy of the country. Thus, there are several negative consequences of globalisation on the economy and they include:

i. Stunted Growth of Nigeria's Manufactures.

Trade liberalisation is one of the hallmarks of globalisation. When Nigeria embraced globalisation in 1986, she had to alter her policies, including those related to trade in line with the dictates of international Institutions like WTO

[57] Moosa, I.A. Foreign Direct Investment: Theory, Evidence and Practice. Palgrave Macmillan, New York, 2002, p. 94.

and the IMF. This policy change was not the best for the country at that point. In fact, it has been opined by a writer that the apparent wholesale adoption of the liberalisation policies and WTO rules at that stage of the country's development has tended to pose a serious threat to the industrialization process in the country[58]. In addition, the Manufacturers Association of Nigeria (MAN) had cause to say that,

> The full-throttle liberalisation of trade has given rise to massive inflows of all manner of finished products from industrialized countries of the West and Asia, including used products (textiles, footwear, automobiles and motorcycles, fridges and air conditioners), substandard and fake products (e.g. pharmaceuticals, cosmetics and toiletries, electrical materials and foods)...[59]

As a matter of fact, one does not need MAN's statement to know about the unbridled importation of any imaginable product into the country courtesy of trade liberalisation policy. The effects are also glaring for any discerning observer to see. The present writer is aware that many of the manufacturing companies in Kano, Kaduna and other industrial cities of Nigeria have closed down and of course, it is simply logical to assume that their once, numerous employees lost their jobs as a result[60]. There is thus no doubt that the free inflow of imports has hindered the growth of local industries in no small measure[61]. In fact, according to UNCTAD report on Nigeria's investment policy, compared to the early 1960s, agriculture, manufacturing and even services have all shrunk as proportion of gross domestic product (GDP) and that foreign direct investment has remained low and of marginal developmental value in sectors other than oil and gas[62]. Nigeria's

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[58] Obadan M.I. and Obioma E.C. op cit., p 16.
[59] Ibid.
[60] See also Akali, K.N. Rethinking Nigeria- IMF/World Bank Relations. A Journal of Constitutional Development. Centre for Constitutionalism and Demilitarisation (CENCOD) Vol. 4, No. 4, 2004, pp.1-21 at p. 6.
[61] Obadan M.I. and Obioma E.C. op cit., p 16
[62] Anonymous. Investment Policy Review of Nigeria. UNCTAD, United Nations, Geneva, 2009, p.1.

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manufacture represents only about four percent of her GDP, compared with 14 percent on the average throughout sub-Saharan Africa[63]. In specific comparison with countries in Africa, exports per capita in 2003 were $493 in South Africa, $59 in Egypt, $24 in Kenya and $3 in Nigeria for the same group of manufactures[64].

Further, some of these products that are indiscriminately imported into the country are such that can be sourced and produced locally, requiring only an addition of a little more effort and technology by entrepreneurs. This is the case with such things as; textiles, footwear, fruit juice, wooden furniture and so on. The basic raw materials for all these are not only sourced locally, but in some cases exported.

Thus, it can be further argued that globalisation has actually resulted in loss of jobs by Nigerians as result of closure of some of these manufacturing firms. In addition, they also lost the skill and experience they would have acquired as a derivative of working in those firms.

In addition to the indiscriminate importation of goods, globalisation has also opened the country's investment doors to virtually any investor and in virtually any investment[65]. It is to the knowledge of the present writer that foreigners are today owners and operators of such businesses as selling of fast food, motor vehicle repairs and sundry businesses[66]. It is particularly worrisome when one takes into account the fact that the country is teeming with unemployed tertiary and secondary school leavers who can very well take up these jobs and even develop it further.

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[63] Ibid, p.5.
[64] Ibid, P.15.
[65] See S.17 NIPC Act, op cit.
[66] Starsteps Ltd., a car repairing company operated by foreigners and based in Abuja, has its workshop on the same street where the Law Office of the present writer is located.

ii. Nigeria Became a Consumer Economy Without a Saving Culture.

Another aspect of globalisation that impinges on investment in the country is that it has turned Nigeria into a consumer nation. Globalisation has succeeded in promoting the acquisition of ostentatious goods like luxuriously fashionable cars, construction of buildings with the latest architectural designs, among others[67]. It also blurred our vision of development such that, we view development as the creation of a "modern", urban", "foreign oriented" lifestyles, which our resources cannot sustain[68]. This view can hardly be faulted. Anybody who takes a look at the cars that ply our roads, particularly in the cities, would see that various kinds of exotic and highly expensive cars are all over these cities. Yet Nigerians do not manufacture even the least of the components of these cars. In fact, in some cases, Nigerians cannot repair them when they break down; rather, foreigners have to be engaged to repair them either here in Nigeria or outside the country. In effect, for the initial purchase of these cars and subsequent repairs, Nigerians have to use scarce resources to finance this ostentatious lifestyle. In most cases, the owners of these cars are not successful businessmen but highly placed politicians and senior public servants, who depend on the public purse. As a matter of fact, these politicians have developed a higher taste. They seem to be no longer interested in exotic and expensive cars but in helicopters and private jets. This is particularly the case with legislators including senators whom the present writer knows to own these helicopters and jets. What this translates to is that they are either over paid or they engage in corruption. But this is even not the issue here. What we are saying is that globalisation, through creating a consumer nation out of Nigeria, has further reduced our ability to save and invest in the economy with our resources. In addition, it is also generating a negative psychology about the need to engage in

[67] Akali, K.N. op.cit., p.12-13.
[68] Ibid.

investment ourselves. The thinking among Nigerians seems to be that foreign investors are what we needed to invest in the economy. Thus, those Nigerians who have access to money do not save for the purposes of investing in the economy but squander it through excessive luxury; hence the nation's over dependence on foreign investors. Unfortunately, we seem to forget that the original owners of some of those foreign businesses that we are clamouring for their presence in our economy did not establish them by wasting their resources but through diligence and frugality.

iii. Collapse of the Educational Sector.

The educational sector did not fare better after our encounter with globalisation. It is instructive that after the adoption of SAP in 1986 and the resultant reduction in the purchasing power of Nigerian workers, many Nigerian University lecturers left the country in search of greener pastures in other parts of the world. It is also in that period that industrial strikes in the universities became re-current, further reducing the quality of graduates from our schools[69].

In fact, the problem starts from the primary school and continues into the secondary school level where the teachers instead of being in the classrooms teaching their pupils, are found in their various farms and stalls where they are trying to make enough to augment their salaries, which is notoriously low. The present writer knows as a fact, that some teachers spend more of their time outside their classrooms. On the other hand, the lecturers in the tertiary institutions, including the universities do not fare better. The present writer is aware of some lecturers who like their primary and secondary schools professional colleagues

[69] Girigiri, B.K. op cit., at p.98-99.

have turned their full-time employment as lecturers into a part time affair where they are seen in the classrooms on a few occasions in a semester. In other cases, the academic and non-academic staff alike embarks on industrial strikes for the better part of academic year in some cases. In fact, the present write, entered for the programme for which this Thesis is written lost almost the whole of 2007 to strike in the university.

The simple fact is that there is a serious decay in the country's educational sector, caused by years of continuous brain drain in the nation's universities. This brain drain has been made possible by globalization of labour which makes it possible for a worker to migrate from one country to another in search of better conditions of service. As a matter of fact, one of the lecturers that taught the present writer one of the courses during the current programme has migrated to Canada in search of greener pastures.

Generally, it has been said that globalisation, which its advocates claim to be the solution to poverty and economic underdevelopment, has accelerated decline in Nigeria and expanded the poverty curtain levels, reflecting ,particularly, on such sectors like, health, education, closure of industries, and the attendant loss of employment[70].

[70] Akali, K.N. op.cit., p.15.

CHAPTER THREE: TRENDS IN FOREIGN INVESTMENT IN NIGERIA.

3.1 Definition.

Foreign investment has been defined as involving the transfer of a package of resources including capital, technologies, management and marketing expertise[1]. It has also been defined as "the acquisition of physical assets and or securities by companies or nationals of one country in another"[2]. In other words, it is a cross-border acquisition of financial or physical assets involving the transfer of capital, in the form of portfolio and direct investments mainly from developed countries to the underdeveloped ones for the purpose of filling savings and foreign exchange gaps and thereby enabling the countries to achieve their economic potentials.[3] It must be pointed out that our interest here is foreign private investment. Foreign private capital flows or foreign private investment does not constitute economic aid, as they do not provide resources to developing countries on concessionary terms even though they may yield substantial benefits. They are flows that originate in the private sectors of the investor's home country and are almost always motivated by normal commercial considerations of profit maximization.[4] There are basically, two forms of foreign investment: Direct investment and portfolio investment[5]. They will be discussed, seriatim, presently.

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[1] Odozi, V. An Overview of Foreign Investment in Nigeria: 1960-1995. CBN Research Department Occassinal Paper. No.11. also cited in Guobadia, D.A. Issues in Facilitating Foreing Investment for National Development in Nigeria. MPJFIL, October 1998, Vol.2, No.4, pp. 38-55 at p. 39.

[2] Akoh, J.I Legal Framework and Requirements for Foreign Investment in the Nigerian Capital Market. MPJFIL (1990) Vol.3, No.2, pp.228-311, at p. 228.

[3] Obadan. M.I. Foreign Capital Flows and External Debt: Perspectives on Nigeria and the LDCs Group. Broadway Press Limited, Lagos, 2004. P. 63.

[4] Ibid.

[5] ibid.

3.2 Foreign Direct Investment.

Foreign Direct Investment (FDI) has been defined as "investment that is made to acquire a lasting interest in an enterprise operating in an economy other than that of the investor, the investor's purpose being to have an effective voice in the management of the enterprise[6]. It has also been defined as the process whereby residents of one country (the source country) acquire ownership of assets for the purpose of controlling the production, distribution and other activities of a firm in another country (the host country)[7].

A lasting interest implies existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence by the investor on the management of the enterprise[8]. Direct investment includes equity capital, reinvested earnings and other capital or (inter-company debt transaction)[9].

From the above definitions, it can be seen that the common feature among them is the term "management" or its equivalent. This term, it must be stated, represents the most important feature that distinguishes FDI from Foreign Portfolio Investment (FPI). This is so as a portfolio investor does not seek control or lasting interest in the enterprise concerned. It is rather, basically characterized by being short term in nature and involving high turnover of securities[10].

FDI may be geared towards export, market development or undertaken at the initiative of the host country government[11]. This means that there can be such

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[6] Ibid, p.64.
[7] Moosa, I.A. op.cit., p.1.
[8] Anonymous. Foreign Portfolio Investment (FPI) and Foreign Direct Investment (FDI): Characteristics, Similarities, Complementarities and Differences, Policy implications and development impact. UNCTAD, Geneva, April, 1999, para. 1. See also www.unctad.org.
[9] Ibid, para. 5.
[10] Moosa, I.A. op.cit, p.1.
[11] Ibid.

things as export-oriented investment, market-development investment and government initiated investment.

3.2.1 Types of Foreign Direct Investment.

FDI may take any of three forms: (i) Greenfield investment; (ii) cross-border mergers and acquisitions (M&As); and joint ventures. Greenfield investment occurs when the investing firm establishes new production, distribution or other facilities in the host country. This is normally welcomed by a host country, like Nigeria, because of its value in job creation and value-added output. Sometimes, the term "Brownfield investment" is used to describe a situation where investments that are formally an acquisition resemble Greenfield investment. This happens when the foreign investor acquires a firm but replaces almost completely, the plant and equipment, labour and the product line.

FDI may occur via an acquisition of or a merger with, an established firm in the host country. This mode of FDI has two advantages over Greenfield investment: (i) it is cheaper, particularly if the acquired project is a loss-making operation that can be bought cheaply; and (ii) it allows the investor to get a quick access to the market. Firms may be motivated to engage in cross-border acquisitions to bolster their competitive positions in the world market by acquiring special assets from other firms or by using their own assets on a larger scale[12]. Whether a firm would choose M&As of Greenfield investment depends on a number of factors, including, firm-specific, host country-specific and industry specific factors[13].

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[12] Moosa, I.A. op. cit., p.14.
[13] Ibid.

Joint venture investment occurs when a foreign investor enters into a partnership with a host country or domestic investors. It involves the sharing of control and decision-making, as well as risks and profits in proportion to the respective contribution of each party[14]. This type of FDI can be seen in the Nigerian Oil and Gas industry where Nigerian National Petroleum Corporation (NNPC) represents the Country in her joint ventures with foreign investors, like Shell-BP Development Company (Nig.) Ltd.

Foreign direct investment (FDI) can also be classified from the perspective of the investor (the source country) and from the perspective of the host country. From the perspective of the investor the following classifications have been identified:

a. Horizontal FDI;
b. Vertical FDI; and
c. Conglomerate FDI[15].

FDI is horizontal when it is undertaken for the purpose of expansion to produce the same or similar kinds of goods abroad (in the host country) as in the home country. More generally, horizontal FDI is undertaken to exploit more fully, certain monopolistic or oligopolistic advantages, such as patents or differentiated products, particularly if expansion at home were to violate anti-trust laws[16]. On the other hand, vertical FDI is undertaken for the purpose of exploiting raw materials (backward vertical FDI) or to be nearer to the consumers through the acquisition of

[14] Obadan, M.I. Foreign Capital Flows and External Debt: perspectives on Nigeria and the LDCs Group. Op.cit., p.67.
[15] Ibid, p.4.
[16] Ibid.

distribution outlets (forward vertical FDI). The third type of FDI, conglomerate FDI, involves both horizontal and vertical FDI[17].

From the perspective of the host country, FDI has also been classified into three types namely:[18]

(i) import substituting FDI;

(ii) export-increasing FDI; and

(iii) government initiated FDI.

Import-substituting FDI involves the production of goods previously imported by the host country. This type of FDI is likely to be determined by the size of the host country's market, transportation costs and trade barriers.

Export-increasing FDI, on the other hand, is motivated by the desire to seek new sources of input, such as raw materials and intermediate goods. This type of FDI enables the host country to increase its export of raw materials and intermediate products to the investing country as well as other countries.

Government-initiated FDI may be triggered, for example, when a government offers incentives to foreign investors in an attempt to eliminate a balance of payment deficit[19]. It is noteworthy that this last type of FDI is found in Nigeria, where the government has a policy of offering several fiscal, financial as well as other types of incentives[20].

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[17] Ibid.
[18] *Ibid.*
[19] Ibid.
[20] See Export (Incentives) Act, Export Processing Zones Act and so on.

3.2.2 Foreign Direct Investment Inflows to Nigeria from 1970 to the Present Era.

Nigeria has a high potential for attracting foreign investments. Apart from the fact that the country has a large market, it is also rich in natural resources, such as, mineral deposits, vegetation, arable agricultural land and so on. These notwithstanding, available data show that the country has not benefited much from foreign investment flows and that whatever volume of FDI inflows to the country has been more in favour of the Oil and Gas sector[21]. Thus, it has been noted that there is a strong correlation between the level of world oil prices and the volume of FDI inflows into the country[22]. Table 3.1 shows increases in FDI inflows, generally. However, a closer look at it will reveal that the increases, particularly from 1986 are partly the result of increase in world oil prices, sharp depreciation of the naira, the privatization policy and the general shift from economic regulation to deregulation and liberalisation[23].

Table 3.1 Net Foreign Direct and Net Foreign Portfolio Investment Inflows.

(₦ Million)

Year	FDI	FPI
1970	128.6	
1971	142.8	
1972	297.8	
1973	186.3	
1974	181.6	
1975	253.0	
1976	212.5	
1977	245.5	

[21] Anonymous. Investment Policy Review of Nigeria. UNCTAD, United Nations, Geneva, 2009, p.21.
[22] Ibid.
[23] Obadan, M.I. Foreign Capital Flows and External Debt: perspectives on Nigeria and the LDCs Group. Op.cit., P.390.

1978	134.4	
1979	184.3	
1980	-404.1	
1981	334.7	
1982	290.0	
1983	264.3	
1984	360.4	
1985	434.1	
1986	735.8	151.6
1987	2,452.8	4,353.1
1988	1,718.2	2,611.8
1989	13,877.4	-1,618.8
1990	4,686.0	-435.2
1991	6,916.1	-594.9
1992	14,463.1	36,851.8
1993	29,675.2	-396.4
1994	22,229.2	-203.5
1995	75,940.6	-6,785.0
1996	111,295.0	-12,056.6
1997	110,452.7	-4,785.8
1998	80,750.4	-637.5
1999	92,792.5	1,015.7
2000	115,952.2	51,079.1
2001	132,481.0	26,317.1
2002	225,224.8	24,789.2
2003	258,388.6	23,555.5
2004	248,224.6	23,541.0

Source: CBN Statistical Bulletin. Golden Jubilee Edition, December, 2008.

This is not surprising as it is on record that FDI inflows in sectors other than oil were directly affected by the indigenization policy adopted in 1972. For instance, FDI inflows fell in the immediate aftermath of the Indigenization Decrees[24], which pushed many non-oil transnational corporations (TNCs) to divest. Among these were Citigroup, IBM and Barclays Bank.[25]. Restrictions on the entry of non-oil

[24] *Nigerian Enterprises Promotion Decree of 1972 and 1977.*
[25] Anonymous. Investment Policy Review of Nigeria. Op.cit., at p.9.

FDI continued, until the late 1980s. In 1989, they were partially reversed, which contributed to a shift in the levels of FDI after that year. However, it was not until 1995 that Nigerian Investment Promotion Commission (NIPC) Act opened virtually all areas of the economy to foreign investors for business purposes[26]. This change of policy and legal regime coupled with improved environment and other forms of reforms have, however, resulted in increases in non-oil FDI, though marginally[27]. This can be seen in some recent investments made by non-oil TNCs in the country such as the purchase and expansion of Nigerian brewery by Heineken in 2004, the entry into the country by some telecommunications companies[28] as well as blue circle industries of the United Kingdom which bought 71% stake in Ashaka Cement Co. Plc., and 58% in West African Portland Cement Company, Scancem of Norway which bought 87% of Cement Company of Northern Nigeria and Global Infrastructure of India which bought 80% of stake in Delta Steel Company[29]. These inflows of non-oil FDI are attributable to the ongoing privatization programme which is a part of the larger reforms.

These increases in FDI inflows notwithstanding, the country's share of FDI among other developing economies is still low. Table 3.2 is a World Bank data showing foreign direct investment (FDI) inflows to Nigeria in relation to other developing countries between1990-1997.

[26] Cap. N117 L.F.N. 2004.
[27] Anonymous. Investment Policy Review of Nigeria. Op.cit., at p.11.
[28] These include MTN of South Africa, Etisalat from the Middle-East , and Airtel owned by Baharti, an Indian company.
[29] Anonymous. Investment Policy Review of Nigeria. Op.cit., at p.11.

Table 3.2. Net Foreign Direct Investment to Nigeria in Relations to all Developing Countries (US$Billion).

year	Nigeria	All Developing countries	Nigeria's Share (%)
1990	0.6	25.0	2.4
1991	0.7	34.4	2.0
1992	0.9	46.1	1.9
1993	1.3	67.0	1.9
1994	2.0	88.5	2.3
1995	1.1	105.4	1.0
1996	1.6	126.4	1.3
1997	1.5	163.4	0.9
1990-1997	9.7	656.2	1.5

Source: World Bank world developing report, vol.1, 1996; Global Development Finance, Vol.1, 1997 and 1999.

It is clear from Table 3.2 that between 1990 and 1997, while net foreign direct investment flows to developing countries have been growing steadily, the relative share of the increasing flow attracted into Nigerian economy maintained a consistent decline except in 1994. For instance, out of the US$25.0 billion investment inflow into all the developing countries in 1990, Nigeria accounted for US$ 0.6billion or 2.4%. But by 1993 when the flow to all developing countries increased to US$67.0 billion, Nigeria's share declined to US$1.3billion or only 1.9%. The share was only 0.9% in 1997. In contrast, China attracted US$44.2billion worth of net foreign direct investment in 1993, representing 27.1% of total flows into developing countries[30].

[30] Obadan, M.I. Foreign Capital Flows and External Debt: perspectives on Nigeria and the LDCs Group. Op.cit., p.390.

Even among African countries, Nigeria's share of FDI inflows into the continent is not faring better. **Table 3.3**[31] shows that even with her oil, Nigeria's share of FDI inflows into the continent has been decreasing. It can be seen from Table 3.3 that in 1990, her share of FDI inflow to Africa was 24.19 %. This share decreased to 21.07 in 1995 and in 2003, it was 7.98 %.

Table 3.3: Nigeria: Net Foreign direct investment inflow (US$ Million).

Year	Africa	Nigeria	Percent of Africa
1980	392	-188.52	
1990	2430	588	24.19
1995	5119	1079	21.07
1997	10667	1539	14.43
1998	8928	1051	11.77
1999	12231	1005	8.22
2000	8489	930	10.96
2001	18769	1104	5.88
2002	10998	1281	11.65
2003	15033	1200	7.98

Source: UNCTAD Foreign Investment Database online.

In the first half of the 1990s, per capital FDI inflows were higher in Nigeria than in any other African country with the exception of Angola and Equatorial Guinea. Thereafter, other African countries began to catch up. In the most recent period (2001 – 2007), the average per capita FDI inflows to other African Countries and other oil producers in the continent all exceeded those to Nigeria. This decline in the country's leading role in terms of attracting FDI in the continent started eroding due to the surge of FDI inflows to other oil rich countries, such as Angola and Sudan. Another factor is the improved FDI performance of other large African

[31] Ayanwale, A.B. op.cit., p.9.

countries such as Egypt and South Africa, which were successful in attracting FDI in diverse sectors of their economies[32].

The situation appears not to have changed, going by the recently released data by the United Nations Conference on Trade and Development (UNCTAD)[33]. This report has it that FDI inflow into Nigeria in 2009 was $5.9billion, however, in 2010, it declined to $2.3billion. This represents a decline of 60.4%. Meanwhile, a country like Egypt achieved a growth rate of 1.7% in the same period, having increased from $6.7billion in 2009 to $6.8billion in 2010. It is as well clear that apart from the fact that FDI inflow into Nigeria declined in 2010, the volume that went to Egypt was higher both in 2009 and 2010[34].

Nigeria's underperformance in FDI attraction outside the oil sector can further be illustrated by reference to prominent TNCs that are not present in the country but have invested in its peers. As at 2003, for instance, only 18 of the top 100 world's largest non-oil TNCs had affiliates in Nigeria, compared with 42 in South Africa, 25 in Egypt and 17 in Kenya[35].

This situation is hardly surprising when it is borne in mind that the oil industry is the most important to foreign investors, in the country. The manufacturing sector, for instance, has been noted to have been stagnated for over 30 years[36]. In this case, for much of the period, FDI was on low scale, either because it was unwelcome or because general business conditions were inhospitable for those foreign investors who remained during the indigenization period of 1970s - 1995.

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[32] ibid.
[33] Soludo, C.C.Response to Segun Aganga, Minister of Finance, Nigeria. Thisday Newspaper Vol. 16, No. 5761, Monday, 31st January, 2011, p.14.
[34] Anonymous. Global and Regional FDI Trends in 2010., No. 5, UNCTAD, Geneva,17 January 2011, p.3.
[35] Anonymous. UNCTAD: Investment Policy Review for Nigeria, op. cit. p.12.
[36] Ibid.

In recent survey showing 50 top non-oil exporters in the country, 13 appear to be foreign enterprises, contributing 36 per cent of export value. By comparison, however, in Brazil, for example, foreign enterprises accounted for about 50 per cent of national secondary sector exports in 2000. Further research shows that in comparative term, exports per capita in 2003 were **$493** in South Africa, **$59** in Egypt, **$24** in Kenya and **$3** in Nigeria for the same group of manufactures.[37] Indeed, Nigeria's manufactured exports performance is very weak.

This low level of FDI inflows into the country even with the change in laws and policies have been attributed, among others, to macroeconomic instability, as evidenced by rising inflation, interest and exchange rate volatility, poor infrastructural facilities, frequent disruptions in power supply, inadequate water supply and a poorly maintained network of roads[38]. The above constitutes serious challenges to the economy. In fact, with particular regard to electricity, a World Bank report has it that not less than 97% of enterprises in Nigeria depend on generators for energy. This is against 9% in South Africa and 19% in Egypt[39]. The government's effort at solving the problem is yet to translate into availability of electricity to investors. On the issue of macroeconomic and fiscal challenges, it has been noted that the current rise in external debt of the country, after debt forgiveness by her creditors in the recent past has the capacity to negatively influence foreign investors as to the overall health of the economy[40]. What all theses translate to is that there is urgent need for the country to tackle these issues if she is, indeed, interested in attracting foreign investment in other sectors than the oil industry.

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[37] Ibid at p.15.
[38] Obadan, M.I. Foreign Capital Flows and External Debt: perspectives on Nigeria and the LDCs Group. Op.cit., p.67.
[39] Anonymous. Investment and Policy Review: Nigeria. UNCTAD (United Nations), Geneva, 2009, p.19.
[40] Soludo, C.C.op.cit.

3.3 Foreign Portfolio Investment.

Foreign portfolio investment (FPI) consists of the acquisition of assets by a foreign national or company in a domestic stock or money market[41]. Thus, it refers to the holding of transferable securities (issued or guaranteed by the government of the importing country), equity shares, debentures, bonds, promissory notes and money market instruments issued in a domestic market by the nationals of some other countries. The money market instruments include treasury bills, commercial papers, banker's acceptances and negotiable certificates of deposits.[42]

The distinguishing character of portfolio investment from direct investment being that while the later seeks to control or exercise some management control over the enterprise in question; the former does not seek such control. The investor, here, basically seeks the profits of the enterprise and percentages of holdings are generally smaller than in cases of FDI. The portfolio investor is entitled to only dividends, interests, or capital gains from asset appreciation. The major motivating factors for portfolio investor are the returns in form of dividends and interests, capital gains and risk diversification.[43]

Foreign portfolio investors may be institutional and retail (individual) investors. In the case of institutional investors, we have such investors as mutual funds, pension funds, and insurance companies. They manage money for individuals and firms. They have been particularly noted to be important as they offer fundamental advantages, particularly for emerging markets, like Nigeria. They are often prepared to accept less liquidity than individual investors, and

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[41] Obadan, M.I. Foreign Capital Flows and External Debt: perspectives on Nigeria and the LDCs Group. Op.cit. p.72.
[42] Ibid.
[43] Ibid.

demand high standards of management. They equally provide a potential source of large and more stable funds and their investments are mostly in long-term assets. They also provide individual investors with a low-cost method of realizing higher returns from a more diversified international portfolio than they could get by themselves without having detailed knowledge of the countries and individual companies issuing securities. On the other hand, individual investors, tend to invest directly and more speculatively than institutional investors, in emerging markets. They usually chase high short-term returns arising from market anomalies, such as delays in price adjustment.

3.3.1 Portfolio Investment in Nigeria from 1986 to the Present Era.

Portfolio investment is a recent phenomenon in Nigeria. This is neither unlike the advanced market economies of Europe and North America where it has been a notable feature nor like the emerging economies of China, Hong Kong, India, Singapore, South Korea, Taiwan, Brazil, South Africa, Russia, among others. In Nigeria, however, up to the mid 1980s, Nigeria did not record any figure on portfolio investment inflow or outflow in her balance of payments accounts. The nil return on the inflow column of the account before 1986 is attributable to the absence of foreign portfolio investors in Nigeria's economy. This is largely because of the non-internationalization of the country's money and capital markets as well as the non-disclosure of information on the portfolio investments of Nigerian investors in foreign money and capital markets[44].

However, since 1986, the portfolio investment account of the balance of payments has been featuring data on value of promissory notes issued by Nigeria

[44] Ibid, p. 383-386.

to her foreign trade creditors (inflow) and the value of redeemed notes under the debt conversion programme (outflow). In general, in the capital account of Nigeria's balance of payments, portfolio investment comprises transactions in bonds, debentures, and notes as well as non-direct investor equity, preferred shares or stocks, mutual funds and investment trusts. It also includes transactions in money market instruments such as treasury bills[45]. **Table 3.4** shows the inflow of portfolio investment in the country from 1986 to 2004.

Table 3.4 Net Foreign Direct and Net Foreign Portfolio Investment Inflows.

(₦ Million).

Year	FDI	FPI
1970	128.6	
1971	142.8	
1972	297.8	
1973	186.3	
1974	181.6	
1975	253.0	
1976	212.5	
1977	245.5	
1978	134.4	
1979	184.3	
1980	-404.1	
1981	334.7	
1982	290.0	
1983	264.3	

[45] Ibid.

1984	360.4	
1985	434.1	
1986	735.8	151.6
1987	2,452.8	4,353.1
1988	1,718.2	2,611.8
1989	13,877.4	-1,618.8
1990	4,686.0	-435.2
1991	6,916.1	-594.9
1992	14,463.1	36,851.8
1993	29,675.2	-396.4
1994	22,229.2	-203.5
1995	75,940.6	-6,785.0
1996	111,295.0	-12,056.6
1997	110,452.7	-4,785.8
1998	80,750.4	-637.5
1999	92,792.5	1,015.7
2000	115,952.2	51,079.1
2001	132,481.0	26,317.1
2002	225,224.8	24,789.2
2003	258,388.6	23,555.5
2004	248,224.6	23,541.0

Source: CBN Statistical Bulletin. Golden Jubilee Edition, December, 2008.

Table 3.4 shows that the level of portfolio investment in Nigeria is low. Net portfolio investment was only N151.6million in 1986. It increased to 4,353.1 million in 1987, but decreased the following year to 2,611.8. From 1989 to 1999, net portfolio investment flow was negative except in 1992 and 1999. This poor

performance of portfolio investment has been attributed to absence of an enabling environment[46]. This is not surprising when it is borne in mind that relevant legal regimes and policies had not been particularly favourable to foreign investment. These laws clearly did not help in internationalizing our money and capital markets. This is in addition to poor corporate governance and weak regulatory institutions.

However, with the liberalisation of our capital market in the mid-1990s, there became a change in the naira value of FPI inflows into the country. This can be seen in the level of inflows between1999-2004. With the recovery of global economies after the global financial meltdown in 2008, there are reports that foreign portfolio investors are returning to the Nigerian capital market.[47]

3.3.2 Benefits of Foreign Investment.

Foreign private investment can make significant contributions to the host country's economic growth and development. It has the potential to address constraints of low levels of domestic investment and foreign exchange shortages in the host country, especially developing economies, like Nigeria. Inflows of foreign investment bring in foreign exchange, supplement domestic savings and raise the level of investment. Also, import substitution industries, if well managed, can help reduce import bill while investment in export industries will directly increase a country's foreign exchange earnings. Besides, a number of second-round benefits from increased foreign investment include creation and expansion of local industries to supply inputs to the newly established foreign owned plants; a rise in

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[46] ibid.

[47] Aderinokun, K, and Egene, G. Foreign Investors Dominate Stock Market. MoneyGuide, Thisday Newspaper, vol. 16, No. 5786, Friday, February 25, 2011, p. 64.

the overall level of domestic demand; the boosting of incomes and state revenue through tax; and the transfer of labour (including management) skills and technology. It is also important to the enhancement of the efficiency of the domestic economy, and this may start occurring prior to the anticipated investment flows. This can arise if the host country addresses a range of domestic problems like provision of infrastructure, enhancement of security, providing and enforcing of code of good corporate governance in order to provide a climate that is conducive to profit and in which it is relatively easy to conduct business[48].

With particular regard to portfolio investment, it has the capacity to expand investors' opportunities for portfolio diversification and provide a potential for achieving higher risk-adjusted rates of return for foreign investors. In some cases, it serves as a prelude to foreign direct investment or a sort of long term planning.[49]

In addition, foreign portfolio equity investment contributes to the financing of domestic enterprises and it allows risk sharing between foreign and domestic investors, as repayments depend mainly on the performance of the firms concerned. It also has the capacity to improve the depth and increase the liquidity of the local stock exchange, bringing benefits to other segments of the capital market, such as the bond market. It equally has the potentials to induce improvements in accounting, information and reporting system, as well as increase the analytical sophistication of the domestic securities industries. In the same vein,

[48] Obadan, M.I op.cit.,p.75.
[49] Achime, N.H. Investment Policy Analysis and the Nigerian Economic System. Zwei Consort Publications, Benin City, 1996, p.82.

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as foreign practices are adopted by domestic shareholders and company managers, domestic companies may improve corporate governance[50].

3.3.3 Negative Effects of Foreign Investment.

No doubt, in the light of the foregoing, foreign investment does have a lot of attractions. But there are also various costs to the host country. These costs are of considerable concern and have the capacity to offset the benefits. In the circumstances, it behooves policy makers to find ways of ensuring inflow of foreign investment and at the same time minimize the costs. Some of the costs of foreign investment can be seen in the concessions offered by the government.

To encourage foreign investment, the host government may have to provide special facilities, undertake additional public services, extend financial assistance, offer tax concessions, or subsidize imports. These have a cost in absorbing governmental resources that could be used elsewhere.

It also has adverse effects on domestic saving. The expectation is that once foreign investment is attracted, it should have an income effect that will lead to a higher level of domestic saving. But this effect might be offset by a redistribution of income away from domestic capital if the foreign investment competes with domestic enterprises and reduces profits in domestic industries. Further, it may also inhibit entrepreneurship in a competitive field, and there can be loss of jobs in domestic firms that lose their market shares as a result of the competition.

In addition, where foreign investors adopt inappropriate capital-intensive technologies, it can as well result in loss of jobs and this can be detrimental to a

[50] Samak, N.A. and Helmy, O.A. Foreign Portfolio Equity Investment in Egypt: An Analytical overview. www.iceg.org/NE/projects/financial/portfolio.pdf. assessed on 29/1/2010, p.2

labour surplus host countries. Some of them also stimulate inappropriate consumption patterns and succeed in reinforcing dualistic economic structures. Capital-intensive technology is incompatible with employment promotion and the advanced labour-saving technology that the foreign investor uses at home is often inappropriate in the developing country. Besides, foreign-owned enterprises have been criticized for not granting indigenes ready access to the technical knowledge of producing the goods or services; neither do they willingly take steps that could lead indigenes of the host country to the achievement of control over technology;

It can also cause a balance of payment problem if the outflow of interests, dividends, and profits on foreign investments causes the host country to experience a net capital outflow. If the host country is not currently earning sufficient foreign exchange to cover the external servicing of the foreign investment, it will have to endure a loss of international reserves or adopt measures to adjust the balance of payments. In one form or another, the remittance of foreign earnings may thus lead to depreciation of the exchange rate, price inflation and loss in real income[51].

Additionally, with particular emphasis on portfolio investment, there are also other features that raise concern, and they include the fact that it usually has a short investment horizon, just a few weeks or months in some cases. It is also easy for portfolio investors to liquidate their investments by selling their equity positions in the secondary securities market. This in turn may lead to an increase in the volatility of domestic asset prices and returns, greater exchange rate volatility or greater interest rate volatility, or both. Furthermore, if the stock of foreign reserve is at a low level, it may cause a balance of payment crises. All these can

[51] Obadan, M.I op.cit., P.76.

create considerable uncertainty, discourage domestic and foreign investment and can ultimately be very damaging to the economy as a whole[52].

The above negative feature of foreign investment is evident in the case of Nigeria, when foreign investors sold off their equities in the stock market as a result of the global financial meltdown in 2008. Today, investment in the capital market has been very much discouraged and a lot of employees were laid off their jobs in the sub-sector. It also had a hand in the fall of some Nigerian banks owing to their involvement in marginal lending to those in the stock business.

3.4 Determinants of Foreign Investments.

As to what determines foreign private investment influx to a given country, two broad factors have been identified. These are the internal and external factors, also known as the push and pull factors.[53] The push factors include, low international interest rates, which in turn favoured the credit worthiness position of the emerging markets, and recessions in major industrial economies, which made more appealing international investments.[54]

With regard to the internal factors, or host country factors, such things as the size and growth rate of the domestic economy; domestic savings level, country's solvency, foreign trade openness as well as macroeconomic stability have been found to be essential to influx of foreign investment.[55] In effect, countries that are safe, more promising and with better institutions and policies,

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[52] Ibid.
[53] Amaya, C.A. and Rowland, P. Determinants of Investment flows into Emerging Markets, Banco de ca Republica (Central Bank of Columbia) P. 8
[54] Ibid.
[55] Ibid at p. 9.

less volatile and developed financial markets tend to get more of the attention of foreign investors.

The Investment Policy Review Programme of UNCTAD aimed at improving FDI policy frameworks in host developing countries, gives an idea of the broad range of policy issues that matter for foreign investors. These issues may cover foreign exchange regulations, taxation, employment, including employment of non-citizens, land issues, competition policy, rule of law and respect for property rights, intellectual property protection, corporate governance and accounting standards, licensing and administration of regulations and investment promotion including incentives, it may also include labour market regulations, Export Processing Zones, and environmental and financial market regulation. The following have also been said to be necessary[56]:

(1) The presence of a stable government with stable policies.

(2) Government bureaucracy should be minimal. An ideal situation is one where all the requirements for a prospective investor can be supplied from one office. This requirement appears to have been met in Nigeria by the Nigeria Investment Promotion Commission. Linked to this is the requirement that government interference should be minimal and that there would be minimum of official corruption.

(3) It should be easy for dividend, profits and any money realized from the investment to be repatriated to the investor's home state. This has also been

[56] Omoregbe, Y. Investment Guarantees and Incentives in the Nigerian Natural Gas Industry. MPJFIL, Vol. 2, No.2, (1998) pp. 142-154, at p. 154.

covered by the provisions of the main investment laws currently in operation in Nigeria[57].

(4) The country should be relatively safe and secure so that the investors and workers can hire and move around in safety without fearing for life and property.

(5) There should be the presence of a well trained and comparatively inexpensive workforce. Unless the workforce is vastly superior to the people in the investor's home state, few investors will locate an industry in a place with a more expensive workforce.

(6) Within the area where the investment is to be sited there should be basic infrastructural support, e.g., constant electricity, as well as a good communication network. In fact, it should be cost effective for the investor to cite his industry in the state in question[58].

Nigeria is clearly finding some of the above mentioned determinants as challenges in her efforts at attracting foreign investments. Some of these determinants are challenging to Nigeria. It will be necessary to further discuss them in order to show the country's position with regard to them.

i. Infrastructural Development.

One of the determinants of foreign investment inflow is the level of infrastructural development in a given economy. In Nigeria, infrastructural development is very

[57] These are the Nigerian Investment Promotion Commission Act and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act.
[58] Omoregbe, Y. p. 142-143.

poor. This is particularly so with regard to power, water, and transport sector. Provision of electricity is a major challenge plaguing the Nigerian economy today. Investors have to contend with power failure or complete unavailability of electricity for industrial purposes. Where an investor chooses to make use of alternative power source like electricity generating plant, he has to contend with the high cost of production associated with such choice of action. In all these, one must bear in mind that with globalisation, goods produced in other countries abound in Nigerian markets and where their production cost is lower than those produced in Nigeria, the average consumer will most probably adopt the primary economic decision of paying less for goods of the same quality, in the least. Apart from cost associated with power, transportation also plays a very important role in distribution of goods and provision of services. In Nigeria, with roads as death traps and a comatose rail system, the average investor will be cautious to invest in the economy.

In all these, one sees an economy that is not investor-friendly. Irrespective of whatever legislation and incentive package the government put in place. Investors would prefer to be producing their goods in a more investor-friendly economy and export them to Nigeria, a very large market. This is more so when it is borne in mind that there is trade liberalisation as prescribed by the World Trade Organisation and the International Monetary Fund to which Nigeria is not just a known active member but has also adopted their recommendations to open borders for inflow of foreign produced goods.

ii. Diligent Implementation of Laws and Regulations.

Law is acknowledged as an instrument of economic engineering, among others. In essence, with the right legislations in place, a country can achieve the goals for which such legislations were enacted. However, with regard to achieving high level inflows of foreign investment, a country needs more than just the enactment of laws. Thus, good laws constitute a factor in the satisfaction of the quest for foreign investment inflow.

In addition to the enactment of relevant laws, there is also the need to implement the laws, for laws that are not implemented are of little or no use to the society for which they are meant to serve. This is also true for policies as no matter how good government policy on any issue or sector of the economy may appear, including the incentives that may come with such policies, it will be of little or no use to the economy without due implementation. Simply, lack of implementation of laws and or policies cause disincentive and defeats the set goals associated with them.[59] This point can be shown to be true with the consideration of the happenings in the Nigerian financial industry. It is common knowledge that Nigerian Banks had problems of failures in the recent past. It happened in the early 1990s necessitating the enactment of the Failed Banks (Recovery of Debts) and other Financial Malpractices in Banks Act, 1994[60].

This Act was enacted to provide for the recovery of debts owed to failed banks and for the trial of offences relating to financial malpractices in banks and other financial institutions[61].

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[59] Atufe, Friday, "SEC DG berates NSE as Cassino," In:Fianancial Stanadard, februaury 12, 2010.
[60] Cap F2 L.F.N, 2004.
[61] Ibid, Long Title.

It is noteworthy that bank failure in Nigeria continued[62]with the latest being the failure of eight banks out of a total of twenty-five in the economy, in 2009. These series of bank failures are not as a result of absence of laws or regulatory authorities; rather, the cause was the inability or failure of the regulatory bodies in carrying out their duties properly and diligently[63]. In fact, a commentator once stated about a bank manager, in the wake of the bank failure of the early 1990s, thus,

> ...His spending spree in the society is unrivalled, he is the toast of many musicians in the society. One would take him for a successful business magnet, far from being that, he is just one of the many bank managers that abound in the country. He is however different from a few others, while his private account and real estate acquisition are on the increase, the bank he manages is on the verge of extinction having reaped (sic) off the bank to the point of no return. The series of frauds carried out by this bank 'damager' sorry, manager is a tip of the iceberg considering the sorry state of the banking institutions in the country, other managers and bank officials have carried out frauds of greater magnitude leaving depositors to gnash their teeth and running here and there to whomever they thought will be of assistance to them in their efforts to retrieve their misappropriated deposits[64].

The situation as represented in this quotation is not better today given the recent case of failure of banks caused by absence of good corporate governance by their officers[65]. If the regulatory authorities such as the Central Bank, the Securities and Exchange Commission, amongst others, were doing their jobs properly, such

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[62] Anonymous.Rescued, healthy banks targeted for acquisition. Punch Newspaper, vol. 17, No. 20570 January 25th, 2010, p. 15.

[63] Fagbohun,L.:Fraud and Negligence in the Financial Sector: The Role of Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree. MPJFIL (1998) Vol.2, No.1 pages 65-84 at 66.

[64] Abbas Dan Subair, Failed Banks Decree. In: Nigerian Tribune, page 6, Monday, March 20, 1995.

[65] Iriekpen Davidson,Lagos,London Courts Freeze Akingbola's N346bn Assets, Ibru paid self commission on official residence. Thisday Newspaper, Vol.14, No.5367, Friday, January 1, 2010, p. 1. It should be noted both Akingbola and Ibru were the Managing Directors of Intercontinental Bank and Oceanic Bank respectively, until they removed by the CBN in 2009.

problems and their likes would not be seen in the nation's financial sector[66] as well as in other sectors of the economy. There is no gainsaying that prudent investors avoid economies with failing banks.

iii. Corruption.

A follow up to the issue of implementation of laws and policies is that of corruption. It is more or less common knowledge that Nigeria ranks high in corrupt practices[67]. In 2002, for instance, Nigeria topped the transparency International poll as the most corrupt nation on Earth[68]. With specific regard to investment related areas, it has been shown that there is a high degree of rent-seeking and bribery in Customs administration in Nigeria. According to the World Economic Forum Global Competitiveness Report 2005-2006, Nigeria ranked102 out of 117 countries in irregular and undocumented extra payments or bribes connected to export and import permits[69].

The government itself recognizes this fact and has enacted laws and adopted policies aimed at the reduction, if not complete eradication of corrupt practices in public sector of the economy. Some of these laws and policies include the Independent Corrupt Practices Commission Act, 2000, the Economic and Financial Crimes Commission Act, 2004, the Nigerian Extractive Industries

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[66] Atufe, Friday, "SEC DG berates NSE as Cassino. Op. cit.

[67] Corruption Index 2008. In: http://www.transparency.org/publications/gcr.
[68] Anonymous. Investment Policy Review of Nigeria. Op. cit., P.50.
[69] Ibid, P. 51.

Transparency Initiative Act, 2007 as well as the Fiscal Responsibility Act, 2007. These laws and policies notwithstanding, Nigeria is still deep in corruption[70].

It accords with reason that investors would likely avoid a country where corruption is rampant as is the case in Nigeria. This is because of the negative effects of corruption both in terms of operating cost and other social ills associated with it. In this regard, it can be said that low level of investment inflows into Nigeria has corruption as a contributing factor[71].

iv. Good Corporate Governance.

Associated with the issue of corruption is that of Good corporate governance. According to a learned author, corporate governance, a system by which companies are directed and controlled, has become a matter of public interest[72]. Another learned writer[73] has stated that globalisation demands meeting international standards which protect investors, maintain their confidence by entrenching and enforcing transparency and good governance. He goes on to say that issues of transparency and good corporate governance have been placed in the centre stage, particularly, in efforts by nations to foster their competitiveness in the global market[74].

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[70] Anonymous. N 5.2bn Scam: Ugbane, others have case to answer, says court. Daily Sun, Friday, March 5, 2010, Vol. 6, No. 1691, p.9. *it should be noted that Ugbane is a member of the Parliament who served in a committee* that kooked into some contracts wrer corruption was alleged.

[71] Atufe, Friday, "SEC DG berates NSE as Cassino. Op.cit.

[72] Akinjide-Balogun, J. New Approach to Corporate Governance: (1999) MPJFIL,Vol3 No.3 pages 423-440 at page 423.

[73] Igwe, J. U. K. Business-Government Relations in Nigeria. Law Development, Research, Publications and Consultancy, Lagos, 2002. page 1.

[74] Ibid.

It is said that the global market which has developed due to the advances in technology means that major investors are international, seeking high standards of governance and common and consistent standard of financial reporting[75]. Meanwhile, the level of governance which exists in Nigeria is unsatisfactory, with public opinion being almost universal in viewing Nigerian Companies as failing in the areas of disclosure, transparency and explanation of corporate policies and actions to shareholders[76] as well as the public. The recent bank failure and the associated revelations of how bank chief executives fraudulently enriched themselves at the expense of their banks readily come to mind. More pathetic is the practice of these banks and their auditors in reporting huge profits running into billions of Naira, while in actual fact, they were incurring huge losses. It is clear that these acts scare away foreign investors especially, portfolio investors. In fact, according to the Director-General of the Securities and Exchange Commission, Arunma Oteh[77], while effective governance is the key to well-functioning capital markets, the Nigeria capital market had in the last two years been characterized by governance weaknesses that had led to improper behavior with sharp practices such as insider dealing and share price manipulation[78].

The cumulative effect of these sharp practices was that discerning investors decided to divest at the same time, leading to heavy glut and the attendant large-scale depression in the value of stocks[79]. In fact, it is on record that as at late 2008, shares of some companies, such as Oceanic Bank Plc. and Intercontinental Bank Plc. were as high as over ₦30:00 per unit owing to results of annual as well as half-yearly and quarterly performance characterised by inflated figures of profit.

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[75] Ibid.
[76] Akinjide-Balogun, J. op. cit.
[77] Atufe, Friday, "SEC DG berates NSE as Cassino. Op. cit.
[78] Ibid.
[79] Ibid.

However, when the Central Bank rose to her regulatory responsibilty and revealed that the figures as were presented to the public by these banks were cooked and unreal, the share prices of these banks on the floor of the Nigerian Stock Exchange plummeted downwards to less than ₦2:00 per unit as at late 2009[80]. In all these, what is clear is that investors are not comfortable with a stock market that is lacking in integrity and does nothing in the face of glaring failure of corporate governance and abuse of corporate responsibility. Therefore, an economy that is serious in her quest for investment whether foreign or domestic should ensure that corporate bodies operating within the economy adheres to the tenets of good corporate governance.

v. Availability of Skilled Labour Force.

Another determinant of foreign investment inflow is the level of skilled labour available in a given economy. By this, it is meant the level of the availability of qualitative workforce in an economy. In this sense the issue becomes the quality of education available in a country through which the bulk of her citizens are trained for the purpose of providing the economy with good hands for the provision of goods and services. In as much as this factor is concerned, it can be said that Nigeria still experiences some challenges. It is easy to point to the fact that there are more than 50 Universities and Polytechnics in the country, however, these institutions for some time now have not been reputed for producing high quality graduates. It is apparent that the standard of education in Nigeria is very low. In the recent past, it has been discovered that less than five percent of the secondary school students who recently sat for the National Examination Council

[80] Anonymous. Thisday, Tuesday, 27th April, 2010, Vol. 15, No. 5483, p. 55.

(NECO) conducted Senior School Certificate Examinations passed enough to have the minimum qualification for entry into the University[81], yet, this examination is what the students, presumably, spent six years preparing for in one way or another.

This poor quality of education in the secondary schools is a carryover from the primary school and it spills over to the Universities and other Tertiary Institutions where students spend more time at home than in school during their school years owing to industrial strikes in the sub-sector. In the end, the result is that Nigeria has very many unemployable graduates thereby being in short of skilled labour force.

vi. Political Stability.

Investors all over the world want a place where they have confidence that the government and her policies will be stable enough to guarantee that contracts entered into by governments will be honoured by another government when there is a change of power. It is common knowledge that political stability is a serious challenge to many African. Although, one can say that with regard to Nigeria, the last twelve years have seen a more stable government and consistent policy than used to be the case. This notwithstanding, it is still fresh in the mind of the present writer the experience of the consortium led by Dangote Industries Ltd. who acquired the Petroleum Refinery at Kaduna as well as the one in Port Harcourt at the tail end of the Administration of Chief Olusegun Obasanjo in 2007 only to have the deal revoked by the government of Umaru Musa Yar'adua which came into power in May, 2007. This kind of uncertainty about a government in

[81] Anonymous. NECO records 98% failure in Nov/Dec 2009 results. The Nation Newspaper. Vol.5, No.1335,Wednesday, March17, 2010 page 5. See also Olatunji Bukola. Minister Laments Low Standard of Education. Thisday Newspaper, Vol.15, No.5430, Friday, March 5, 2010, page 9.

honouring contracts entered into by its predecessor does not encourage both domestic and foreign investors.

vii. Security.

Ordinarily, an investor would like to be reasonably assured of the security of his life and investment. It is obvious that an investor has to be alive for him to invest. In Nigeria, the issue of security of lives and property is of a serious challenge. It is granted that every economy has its own share of criminals but it must also be said that the ability of the state to investigate crimes, arrest and successfully prosecute criminals has to be taken into consideration by any serious minded investor. It is not to the credit of Nigeria as an economy that the police and other security agents are hardly able to resolve the several cases of killings and kidnappings that have taken place in some parts of the country in the recent years. In the Niger Delta for instance, where Oil and Gas exploration is carried out, one hears about the kidnap of one expatriate or another. In fact, the kidnappings have been extended to non foreigners and it does not appear that the government has an answer to it. This is distinct from the destruction of oil installations in the region by militants who are clamouring for a better deal by the government of the federation in favour of the indigenous peoples of the oil rich Delta. It is recognized that the government's offer of Amnesty to the militants in exchange for their cessation of armed struggle is yielding positive fruits, except for the recent bombings of the venue for post amnesty talk organized by the Vanguard Newspaper on the 15th March, 2010[82] as well as that which took place on 1st

[82] O'Neil Shola, Ologun Sanni and Aiwere Okungbowa: Exodus of ex-militants as bomb probe begins. The Nation Newspaper, Vol. 5, No. 1335, Wednesday, March 17, 2010, page1. See also Olaniyi, Bisi. Niger Delta militants attack Shell's facility in Rivers state, resume armed struggle. The Nation on Sunday, vol.04, No. 1297, February7,

October, 2010 at the Independence Anniversary celebration at Abuja, where not less than 10 people reportedly lost their lives.

Apart from the insecurity posed by the militants and other criminals like Armed robbers, assassinators, swindlers amongst others, there are also the issue of religious and ethnic conflicts in the country. Between 2008 and early 2010, there have been several such crisis[83] in several parts of the country. This situation certainly does not encourage investors.

2010, page 8. See also Olaniyi Bisi. Yar'Adua's illness: Militants strike oil pipelines over delay on demands. The Nation on Sunday, Vol.04, No,1248, December 20, 2009, page51.

[83] Alli Yusuf. Jos Crisis: 150 corpses found in village wells. The Nation on Sunday Vol. 04, No, 1283, January 24, 2010 page 8. See also Olawale Taiwo. Jos: From Tin City to Massacre City. Thisday Newspaper Vol.15, No.5433, Monday, March8, 2010, page 3.

Chapter Four: TRENDS IN INVESTMENT LAWS AND POLICIES IN NIGERIA.

4.1 Immediate post Independence Era.

The Nigerian investment policy at independence and until late 1960s was to encourage foreign investors to be part of the economy by investing in the economy. In the oil industry, for instance, there were some changes leading to the entrance of some foreign companies other than those that were in the industry during the colonial era. Some of these companies such as Tenneco, Texaco, Gulf, Agip, Safrap, Esso Petroleum, Philips Petroleum, Union Oil, entered into the Nigerian Oil Industry after independence in 1960. The concern of the emerging political class was to open Nigerian economy up for external capital and modern technological inflow[1]. It has been said that following independence, the policy makers, in recognition of the importance of foreign direct investment, and that application of restrictive measures against entrepreneurs could be catastrophic to the economy, chose a liberal economic policy towards capital injection[2]. Further, there were also assurances that the Nigerian government would not engage in nationalization unless it became inevitable and that such a development will never fall short of the minimum standard as spelt out by International law. This expressed desire of the political class coincided with that of the foreign investors, who bought into the nation's economy. This resulted in strengthening the incentives and protections already enjoyed by foreign investors prior to independence. These incentives can be illustrated by such laws as the Industrial Development (Import Duties Relief) Act[3], Industrial Development (Income Tax

[1] Aremu, J.A. Attracting and Negotiating FDI with TNCs in Nigeria. Market Link Communications, Lagos, 2005. p.114.
[2] Ibid, p.113.
[3] 1957.

Relief) Act[4] as well as the Income Tax (Amendment) Act[5]. In 1962, however, the Exchange Control Act was enacted. This affected the liberal exchange policy hitherto in place[6].

Another notable policy of this era was that the government was also investing in the economy not only through the provision of necessary infrastructures but also by establishing and managing business enterprises. This was evident particularly in such things as the provision of electricity, water, rail as well as air transport, telecommunication and so on. Some of the sectors that the government ventured into became monopolized by her.[7] Thus, it was a mixed economy where both the public and private sectors were co-players. A learned writer has rationalized this by saying that at independence, the Nigerian population was largely illiterate and poor, with the private sector still in its infancy and could not be a major player in industrialisation and service delivery[8]. This was in addition to the thinking in official circles, in accordance with dominant world thought, that industries whose service will beneficially impact on majority of the population should be run by the state.[9]

To this extent, there was what can be called equal opportunity for both Nigerians and foreigners, except for the requirement of some permits to be acquired by a foreigner intending to invest in the economy[10]. This came as a result of the enactment of Immigration Act in 1963. It was only in the next stage of

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[4] 1958.
[5] 1959.
[6] S. 7 of the Act provides that nobody within Nigeria could make any payment to anybody outside Nigeria or make such payment on behalf of anybody resident outside Nigeria without the permission of the Minister of Finance.
[7] These can be seen in the ownership of National Electric Power Authority (now known as Power Holding Company of Nigeria), Nigerian Telecommunications Commission, Nigerian Railway Corporation, as well as the Nigerian Airways.
[8] Onyekpere, E. Challenges for the Privatisation Programme. In: Readings on Privatisation. (Social Economic Rights Initiative) edited by Onyekpere, E. (2003) pp. 24-35 at p. 24.
[9] *Ibid*.
[10] These permits include entry and business permits obtainable from the Minister of Internal Affairs.

economic development and change of policy, called Indigenisation Policy, that foreign ownership of investment in the country became subject to a different policy from that of indigenous investors. This was particularly in sectors other than the petroleum industry.

4.2 The Period of Indigenisation and Protectionism.

As earlier stated, the investment policy of Nigeria at Independence and even until the early 1970s was one of non-discrimination between Nigerians and foreigners. This position, however, changed in 1972. In that year, the Nigerian government embarked upon a policy of indigenisation of the control and ownership of businesses with a view to ensuring that Nigerians participated in the different sectors of the economy[11].

It has been said that this policy was borne out of the desire to ensure that political independence is further consolidated by economic independence[12]. This view is amply supported by the government's policy statement on Nigeria's second National development Plan, 1970 – 74, which among others declared;

> The Government will seek to acquire, by the law of necessity, equity participation in a number of strategic industries that will be specified from time to time. In order to ensure that economic destiny of Nigeria is determined by Nigerians themselves, the government will seek to widen and intensify its positive participation in industrial development[13].

It may also be needful to mention that Nigeria was not alone in this policy among African nations. In fact, it has been stated that in the seventies, the economic policy

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[11] Guobadia, A. Received Law, Local Statutes and Social Justice in Independent Nigeria- Some Reflections on the Regulations of Business. Bendel State University Law Journal. Vol. 1 No. 1 (1991-1992) pp. 13-32 at p. 20.

[12] Yerokun, O. Challenging Investment Climate Through Law and Policy in Nigeria. Op. cit. p.221.

[13] *The Federal Republic of Nigeria Second National Development Plan, 1970-1974, p. 289. Cited in* Agom, A.R. History of Capital Market Regulation in Nigeria. (ABULJ) 2002, p. 86-104 at 94.

in Africa was centred on indigenisation and that other African governments who pursued similar policies included, Kenya, Ghana, Zambia, Egypt and so on[14]. This was the case even though it was not called indigenization in some of the cases mentioned, the objective in every case, however, was to wrest the ownership and control of local industry from aliens who dominated the major part of the economies[15].

In the case of Nigeria, this policy was given a legal backing by the enactment of a law, commonly known as the Indigenisation Decree[16]. This Decree grouped business enterprises into three schedules. Accordingly, all enterprises in its first schedule were exclusively preserved for Nigerians.[17] The Decree deemed an enterprise to be an alien enterprise unless the entire capital or propriety interest, whether financial or otherwise, in the enterprise in so far as it concerns any of the enterprises in that schedule was owned and controlled by Nigerian citizens or associations[18]. In addition, all enterprises specified in the second schedule were banned to aliens and accordingly, no alien was allowed to be the owner or part owner of any such enterprises;

(a) Where:

(i) the paid-up share capital of the enterprises did not exceed ₦200,000; or

(ii) the turn-over of the enterprise did not exceed ₦500,000:00[19]; and

[14] Yerokun, O. Challenging Investment Climate Through Law and Policy in Nigeria. op. cit, at p.221.
[15] Ibid.
[16] The Nigerian Enterprises Promotion Decree No. 4, 1972.
[17] Ibid, Interpretation section of the Act.
[18] S. 4, ibid.
[19] Ibid.

(b) if the paid-up share capital exceeded ₦200,000:00; or the turn-over exceeded ₦500,000:00, where the equity participation of Nigerians was less than 40%.[20]

The third schedule provided that Nigerians were to have at least 40% of the enterprises listed under it. This policy, however, did not affect the Petroleum sector but the Government could enter into a joint venture with oil producing companies in that sector[21].

A learned writer has opined that the rationale behind the scheduling of enterprises and reserving of some of them to Nigerians was that it would be unfair for foreigners, who are in most cases financially and technically superior to local entrepreneurs to struggle with the latter for enterprises like baking of bread, hair dressing, trade retailing, distributorship of beer, drinks etc[22].

Another aspect of the indigenisation policy was the expressed intention of the government to acquire equity participation in some companies. As stated earlier, the government had in the Second National Development Plan, 1970 – 1974, inter alia, declared, "the government will seek to acquire by the law of necessity, equity participation in a number of strategic industries that will be specified from time to time..." [23].

In fulfillment of this goal, the government went ahead to acquire controlling shares in some companies. To this end, it has been stated that as at 1973, the Federal Government had acquired shares worth ₦800m in shell BP, Phillips, Agip, Safrag, Mobil and Gulf Oil companies[24].

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[20] S.5 (1) (a), ibid.
[21] Omotola, J.A. and Adeogun, A.A. (ed.) Law and Development. Lagos University Press. 1987, p. 98.
[22] Yerokun, O. Challenging Investment Climate Through Law and Policy in Nigeria op. cit., p. 221-222.
[23] Agom, A.R. op. cit., at 94.
[24] Ibid.

It is significant, however, that these government shares in various companies as well as other public statutory corporations later became the subject of privatisation during the next investment policy change.

4.3 The Era of Deregulation and Liberalisation .

In 1986, in reaction to her economic problems, the government initiated a policy known as Structural Adjustment Programme (SAP). This programme articulated a policy of deregulation directed at, among others, attracting foreign investment to reverse the downward trend in the nation's fortunes.

This restructuring of Nigeria's investment climate, with the introduction of SAP, may be regarded as a watershed in her struggle to achieve economic growth and development. The economic realities of the indigenisation era, the large-scale economic depression of the 1980s, which further discouraged foreign investment influx into the country and the attendant massive capital flight, necessitated the introduction of a radical legal regime to open up the Nigerian economy. As it were, the main features of the Structural Adjustment programme were:

a. The strengthening of the hitherto strong demand management;

b. The adoption of measures to stimulate domestic production and broaden the supply base of the economy;

c. The adoption of a realistic exchange rate policy;

d. Further rationalisation and restructuring of tariffs in order to aid the promotion of industrial trade diversification;

e. The move towards improved balance of trade and payment liberalisation;

f. The reduction of complex administrative controls simultaneously with a greater reliance on market forces;

g. Adoption of appropriate pricing policies, especially for petroleum products and public enterprises; and

(h) To encourage the rationalization and privatization of public sector enterprises[25].

To this end, several legal and institutional frameworks were put in place[26]. It is noted, however, that most of these laws are no longer extant, having been repealed by subsequent legislations[27] in a bid to properly position the country in the globalised economy of the world.

It is on the basis of these extant laws and policies relevant to investment that we discuss the next sub-topics, which deals with such issues as the requirements for entering into the country as an investor, in the case of a foreigner, what a prospective investor has to do to enable him participate in the economy in that capacity, having entered into the country, protection of his property as well as incentives available to him in the capacity of an investor.

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[25] Akanle, O. Regulation of Trade and Investment in Nigeria. In: Ajomo, M. and Akanle, O. (ed.) Regulation of Trade and Investment in an Era of Structural Adjustment: The African Experience, Lagos, NIALS, 1995 , P. 40 at p. 51.
[26] Among these are: Second-Tier Foreign Exchange Market Act, of 1986, Exchange Control (Anti-Sabotage) Act, Nigerian Enterprise (Issue of Non-voting Rights Shares) Act of 1989 an so on.
[27] Example is the Nigerian Investment Promotion Commission, Act, enacted in 1995, now Cap. N117, L.F.N. 2004.

4.3.1 Entry Requirements.

An investor intending to enter the country's investment environment will have to satisfy certain conditions in that regard. To this end, the ease or otherwise with which an investor enters and invests in the country is dependent on whether he is a citizen of Nigeria, as defined by the Constitution[28] or not. Where an intending investor is not a citizen of Nigeria, then he will need the permission of the Minister of Interior to enter into the country as well as a business permit to enable him carry on business in the country[29]. The relevant law regarding issuance of permits is the Immigration Act.[30] It provides in section 8 (1) (b) that no person other than a citizen of Nigeria shall on his own account or in partnership with any other person, practice a profession or establish or take over any company with limited liability for any such purpose without the consent in writing of the Minister[31].

The implication of this provision is that, a non Nigerian citizen cannot do any of those things listed except he has a written permission, which is a business permit, from the relevant authority. In addition, a foreigner who wishes to work in Nigeria as an employee of any business unit other than being employment with the federal government or a State government must obtain what is termed an expatriate quota[32]. Normally, the initial expatriate quota is sought and obtained along with the Business permit. It is the duty of the company wishing to employ the expatriates, and not the employee, to apply for expatriate quota[33]. It is when a prospective

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[28] See chapter three of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended).
[29] See the case of Awolowo V. Sarki & Anor. (1966) 4 N.S.C.C. 209.
[30] Cap I1 L.F.N. 2004.
[31] Minister of Interior.
[32] S. 8(1)(a) of Cap. I1, op.cit.
[33] See Oilfields Supply Centre Ltd. V.Johnson (No.2) (1987) 2 N.W.L.R. 625.

investor has entered Nigeria that he can validly talk about participating in the economy as an investor.

4.3.2 Participatory Requirements.

Where an investor has succeeded in entering Nigeria in that capacity, the next issue that would be of concern to him would be the kind of business he would invest in. This issue used to be of great concern to foreign investors during the era of indigenisation and protectionism. However, the current policy is that of liberalisation and as such, a foreign investor can participate in virtually any kind of business[34]. Thus, a non-Nigerian may invest and participate in the operation of any enterprises in Nigeria,[35] subject to what the Nigerian Investment Promotion Commission Act[36] (NIPC Act) termed "negative List"[37]. This list is made up of such things as the Production of arms, ammunition, etc; Production of and dealing in narcotic drugs and psychotropic substances; Production of military and Para-military wears and accoutrement, including those of police and customs, Immigration and Prison services; and such other items as the Federal Executive Council may, from time to time, determine.[38] This list applies to both Nigerians and foreigners alike[39].

With regard to portfolio investment, the law has also liberalized it. Accordingly, a person whether resident in Nigeria or outside Nigeria; or a citizen of Nigeria or not may deal in, invest in, acquire or dispose of, create or transfer any

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[34] See part five of the Nigerian Investment Promotion Commission Act, Cap. N117 L.F.N. 2004.
[35] S. 17, ibid.
[36] Ibid.
[37] S.18, ibid.
[38] S. 31, ibid.
[39] Ibid.

interest in securities and other money market instruments whether denominated in foreign currencies or not[40].

It is instructive that the components of the "negative list" are matters or issues bordering on security of the country and it is understandable in the sense that allowing the production and dealing in those items, freely without restriction can constitute serious security risk to the country. It has been observed that the provisions of the Act to the effect that a non-Nigerian may invest and participate in the operation of any enterprise in Nigeria, except the negative list is the most generous decision to make, that is, by throwing wide open the door to invest in the nation's economy.[41] This is trite in the sense that the provisions of the Act constitute, by far, a shift from what the law was in the era of protectionism.

This stage is to be followed by fulfilling a requirement to register or incorporate a company that will carry on the business with the Corporate Affairs Commission (CAC)[42], particularly in the case of a foreign investor[43]. It is the law that every foreign company which was incorporated outside Nigeria, but having the intention of carrying on business in Nigeria, must be incorporated as a separate corporate entity in Nigeria for that purpose. Until this is done, such company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service of documents or processes in the country for any purpose other than the receipt of notices and other documents in relation to matters preliminary to incorporation[44]. There is however exceptions to this provision of the law but these exceptions do

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[40] See S. 26 of Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, L.F.N 2004.
[41] Yerokun, O. op. cit at 163.
[42] This is a body whose functions include the registration and incorporation of businesses and companies.
[43] S. 19 of Cap. N117 L.F.N. op. cit.
[44] See S. 54 of Companies and Allied Maters Act, Cap. C20, L.F.N 2004.

not affect private investment companies, generally[45]. As to the issue of incorporating a company, the law requires that any two or more persons can do so; provided that none of them is of unsound mind and has been so found by a court in Nigeria or elsewhere; or an undischarged bankrupt; or have been convicted of an offence in connection with the promotion, formation or management of a company; or has been found guilty (in the course of winding up of a company) of acting recklessly or in fraudulent manner; or has otherwise been guilty, while an officer of that company, of any fraud in relation to that company or of any breach of his duty to the company[46]. However, where they are only two people, none of them must be less than 18 years of age[47].

Apart from the issue of incorporating the enterprise, the investor shall, where applicable, also obtain license, lease, permit or any other approval as may be required for the establishment or operation of the enterprise[48]. It is submitted here that the investor would be required to obtain such permits as banking license from the Central Bank, in case of banking business, Insurance License from the Insurance Commission, in case of Insurance business, Oil prospecting lease, in case of investment in the oil sector, and so on depending on the type of business the investor has interest in investing. Moreover, an enterprise in which foreign participation is permitted is also required to register with the Nigerian Investment Promotion Commission (the Commission)[49]. It is instructive that once the enterprise concerned completes the forms and any other relevant documents and submits same to the Commission, the later will have no choice but to register it[50].

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[45] S. 56, ibid.
[46] See SS. 20, 254, and 506, ibid.
[47] S. 20(1)(a) and (2), ibid.
[48] S.19(2), NIPC Act, op. cit.
[49] S.20(1), ibid.
[50] S. 20(2) ibid. see also Lasis v. Registrar of companies (1976) 9 N.S.C.C 410.

Where the investment is in the form of portfolio investment, the foreign investment has to be registered with the Securities and Exchange Commission[51].

As to the issue of bringing in money for the purpose of investment, the law is that any person may invest in any enterprise or security with foreign currency or capital imported into the country through an authorised dealer[52] either by telegraphic transfer, cheques or other negotiable instruments[53].

Where an investor complies with the above requirements, he can be said to have done the necessary things to enable him participate in the country's economy as an investor.

4.3.3 Requirement for Technology Transfer and Skill Acquisition.

With regard to technology transfer, the policy has been to encourage the transfer of technology to indigenous entrepreneurs by foreign investors. This policy found expression in a statutory provision, National Office for Technology Acquisition and Promotion Act (NOTAP Act)[54]. The Act established the National Office for Technology Acquisition and promotion (the National Office).[55] The functions of the National office are as enumerated in section 4 of the Act and they include:

(a) The encouragement of a more efficient process for the identification and selection of foreign technology;

(b) The development of the negotiation skills of Nigerians with a view to ensuring the acquirement of the best contractual terms and conditions by

[51] See S. 13(l) of Investment and Securities Act, No. 29 of 2007.
[52] Authorised dealer means any bank licensed under the Banks and Other Financial Institutions Act, and such other specialized bank and issued with license to deal in foreign exchange. See S. 41 of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, L.F.N. 2004.
[53] See S. 15, ibid.
[54] Cap. N62 L.F.N. 2004.
[55] S.1(1), ibid.

Nigerian parties entering into any contract or agreement for the transfer of foreign technology;

(c) The provision of a more efficient process for the adaption of imported technology;

(d) The registration of all contracts or agreements having effect in Nigeria on the date of the coming into force of the Act, and of all contracts and agreement entered into thereafter, for the transfer of foreign technology to Nigerian parties; and every such contract or agreement shall be registerable if its purpose or intent is, in the opinion of the National office, wholly or partially for or in connection with the use of trademarks; the right to use patented inventions; the supply of technical expertise in the form of the preparation of plans; diagrams, operating manuals or any other form of technical assistance of any description whatsoever; the supply of basic or detailed engineering; the supply of machinery and plant; and the provision of operating staff or managerial assistance and the training of personnel ; and

(e) The monitoring, on a continuous basis, of the execution of any contract or agreement registered pursuant to the Act.

It is clear from the above that national interest is the paramount factor when the National Office is considering registration of contract or agreement for transfer of technology.[56] Where an agreement or the technology to be transferred is not in the national interest, it should not be registered[57].

The effect of non registration of an agreement or contract where required is that no payment shall be made in Nigeria to the credit of any person outside

[56] Fabunmi, J.O. op. cit. p. 61
[57] S. 6 (2), Cap. N62, op cit.

Nigeria by or on the authority of the Federal Ministry of Finance, the Central Bank of Nigeria or any licensed bank in Nigeria in respect of any payments due under the contract or agreement.[58]

4.4 Protection of Investors' Property.

Historically, it can be said that protection of investments and property rights in Nigeria predated the country's Independence[59]. At the 1957 constitutional conference, in London, Nigerian delegates insisted and eventually had as one of the decisions reached at the conference to be that the Nigeria government should be constitutionally obliged to pay due compensation for properties acquired for industrial developments.

Accordingly, the 1960 Constitution of Nigeria had a provision for the protection of property[60]. Both the 1963 and 1979 Constitutions had similar provisions[61]. These provisions relate to protection of movable and immovable property.

There is also a similar provision in the 1999 Constitution. Section 44(1) of the latter Constitution provides as follows:

> 44 (1) No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:
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> a. requires the prompt payment of compensation therefore; and

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[58] S. 7(1), Ibid.
[59] Igwe, J.U.K. op.cit.,p. 86 – 87
[60] S. 30 (1).
[61] S.31 of 1963 Constitution as well as S. 40 (1) of the Constitution of Federal Republic of Nigeria, 1979. See also Igwe, J.U.K. op. cit

b. gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

Similarly, the Nigerian Investment Promotion Commission Act provides that no enterprise shall be nationalized or expropriated by any Government of the Federation; and no person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other person.[62]It further provides against acquisition of enterprise by the federal government except in the national interest or for public purposes and in such a case, the owner shall be paid a fair and adequate compensation and the person concerned has a right of access to the courts for the determination of his interest or right and the amount of compensation to which he is entitled[63]. Any compensation payable as a result of the above provisions is to be paid without undue delay, and authorization for its repatriation in convertible currency is to be issued, where applicable[64]. For the purposes of these provisions, capital is defined to mean cash contributions, plants, machinery, equipment, building, spare parts, raw materials and other business assets, other than goodwill[65]. As to what amounts to undue delay, it is submitted that it is the court that will say.

These provisions of both the Constitution and the Nigerian Investment Promotion Commission Act accord with the United Nations Resolution on the New International Economic Order[66]. This resolution provides that nationalisation, expropriation or requisitioning shall be based on grounds or reasons of public

[62] S.25(1).
[63] S. 25(2), ibid.
[64] S. 25(3), ibid.
[65] S. 31, ibid.
[66] Resolution 1803 (xvii), 1962.

utility, security or the national interests which are recognised as overriding purely individual and private interests both domestic and foreign[67].

Apart from the protection of movable or immovable property as discussed above, Nigerian laws equally make provisions for the protection of Intellectual property.

4.5 Protection of Intellectual Property.

With regard to intellectual property, Nigeria is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Universal Copyright Convention, the Bern Convention, the Paris Convention and the Rome Convention[68]. The national framework for intellectual property protection is characterized by several legal instruments, including the patent and Design Act of 1970, the Trade marks Act of 1967 and the Copyright Act of 1988, matched by a number of implementing agencies. The Ministry of Commerce is in charge of the industrial property protection, through the Registry of Trademarks, Patent and Designs while Copyright is administered by the Ministry of Justice, through the Nigerian Copyright Commission. The respective protection of individual types of intellectual property will be discussed presently.

i. Copyright.

As to copyright protection, the legal regime is the copyright Act (the Act)[69]. It protects copyright in literary works; musical works, artistic works, cinematograph films; sound recordings; and broadcast[70]. A literary, musical or artistic work would only be eligible for protection under the Act, if the work has an

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[67] Machowski, J. Current Developments in International Economic Law. Proceedings of the 7th, 8th and 9th Annual Conferences of the Nigerian Society of International Law: 1975-1978, at page 11, NIALS by Ajomo, M.A.

[68] These are conventions relating to protection of intellectual property.

[69] Cap. C28 L.F.N. 2004.

[70] S. 1 (1), ibid.

original character and has also been fixed in any definite medium of expression now known or later to be developed from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device[71]. An artistic work shall not be eligible for copyright, if at the time when the work is made, it is intended by the author to be used as a model or pattern to be multiplied by any industrial process[72]. However, a work is not made ineligible for copyright protection by reason only that the making of the work or the doing of any act in relation to the work involved an infringement of copyright in some other work[73]. Copyright is conferred on every work, which otherwise qualifies as such, if the author or in the case of a work of joint authorship, any of the authors is at the time when the work is made, (i) an individual who is a citizen of, or is domiciled in Nigeria or (ii) a body corporate incorporated by or under the laws of Nigeria[74]. It also protects every work if,

(a) on the date of its first publication at least one of the authors is:

i. a citizen of or domiciled in or;

ii. a body corporate established by or under the laws of a country that is a party to an obligation in a treaty or other international agreement to which Nigeria is a party;

(b) the work is first published-

i. in a country which is a party to an obligation in a treaty or other international agreement to which Nigeria is a party;

ii. by the United Nations or any of its specialised agencies; or

(c) by the Organisation of African Unity (African Union) ; or

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[71] S. 1 (2),ilbid.
[72] S. 1, ibid (3].
[73] S. (4), ibid.
[74] S. 2 (1), ibid.

(d) by the Economic Community of West African States[75].

Apart from these, there is protection also for works of government, state authorities, international bodies[76], as well as every work, other than a broadcast, which, being eligible for copyright, is first published in Nigeria or recorded or made in Nigeria[77].

Generally, a copyright in a work entitles the owner to the exclusive right to control the doing in Nigeria any of the following acts:

a. In the case of a literary or musical work, to do and authorize the doing of any such things as-
   i. Reproduce the work in any material form;
   ii. Publish the work;
   iii. Perform the work in public;
   iv. Produce, reproduce, perform or publish any translation of the work;
   v. Make any cinematograph film or a record in respect of the work;
   vi. Distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement;
   vii. Broadcast or communicate the work to the public by a loudspeaker or any other similar device;
   viii. Make any adaptation of the work;
   ix. Do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-paragraohs (i) to (vii) of this paragraph;
b. In the case of an artistic work, to do or authorize the doing of any of these-
   (i) Reproduce the work in any material form;

[75] S.5, ibid.
[76] S.3, ibid.
[77] Ibid.

(ii) Publish the work;

(iii) Include the work in any cinematgraph film;

(iv) Make any adaptation of the work;

c. In the case of cinematograph film, to do or authorize the doing of any of the following acts, that is-

(i) Make a copy of the film;

(ii) Cause the film, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;

(iii) Make any record embodying the recording in any part of the soundtrack associated with the film by utilizing such soundtrack;

(iv) Distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement[78].

Copyright is transmissible by assignment, license, testamentary disposition or by operation of law[79]. There are both civil and criminal liabilities for infringement of copyright. For the purposes of civil action for infringement, it is actionable at the instance of the owner, assignee, or an exclusive licensee of the copyright and reliefs such as damages, injunctions, accounts or otherwise shall be available to the plaintiff[80].

Under criminal liabilities, sanction ranges from a penalty of ₦100 for every copy of the infringed material found with the defendant or a term of imprisonment not exceeding two years or both, to a penalty of ₦1000 for every infringed copy or a prison term not exceeding five years[81].

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[78] See S. 6, ibid.
[79] S. 11, ibid.
[80] S. 16 (1), ibid.
[81] S.20, ibid,.

It is also the provision of the Act that infringement of a copyright shall be actionable at the instance of the owner, assignee or an exclusive licensee thereof[82]. The provisions of this Act notwithstanding, there are widespread cases of abuse in the form of piracy. This can be seen in the mass production of some copyright works by people who are neither the authors nor did they comply with the requirements of the law in that regard. This situation is most likely a consequence of ineffective enforcement of the law by the concerned authorities. This trend can be brought to an end if the regulatory institutions are strengthened and made to implement the laws accordingly.

ii. Trade Marks.

Similarly, there is protection for Trade Marks and this is provided for by the **Trade Marks Act (the Act)**[83]**.** A Trade Mark in the context of the Act include: a device, brand, heading, label, ticket, name, signature, word, letter, number, or any combination thereof[84]. Under this Act, there is a register, [85] called the "register" of trade marks, in which all registered trade marks with the names and addresses of their proprietors, the date on which applications were made for their registrations, notifications of assignment and transmissions, the names and address of all registered users and such other matters relating to registered trademarks are entered[86]. A trade mark, if registered, gives the proprietor the exclusive right to use it in marketing or selling his goods. Consequently, the proprietor can initiate an action for its infringement or for passing off or for both against any person who

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[82] S. 15 (1), ibid. See also M.C.S.Ltd./Gte. V. Adeokin Records (2007) 13 NWLR (Pt.1052) 616.
[83] Cap. T13 L.F.N. 2004.
[84] See Ferodo Ltd. V. Ibeto Ind. Ltd. (2000) 5 NWLR (Pt.866) 317.
[85] S. 2(1), cap. T13 L.F.N 2004, op.cit.
[86] Ibid, S. 1 (1).

uses it or an identical mark, or any mark so nearly resembling it as to likely deceive or cause confusion between his own goods and the proprietor's goods[87].
It is a defence, to a claim of injunction or other relief by any claimant for infringement of the right of use of a trade mark, if the defendant establishes to the satisfaction of the court that the use of which the plaintiff complains is not likely to deceive or cause confusion or lead to the belief in a connection in the course of trade between the goods and some persons entitled either as proprietor or as a registered user to use the trade mark[88]. It is an offence punishable, on conviction, with a fine not exceeding two hundred naira, for any person to falsely represent trade mark as registered[89].

iii. Patents and Designs.

An invention is patentable if it is new, results from inventive activity and is capable of industrial application, or if it constitutes an improvement upon a patented invention and also is capable of industrial application[90] . An invention is new if it does not form part of the state of the art, and it results from inventive activity if it does not obviously follow from the state of the art, either as to method, the application, the combination methods, or the product which it concerns, or as to the industrial result it produces, and an invention is capable of industrial application if it can be manufactured or used in any kind of industry, including agriculture[91]. The term "art" as used here means the art or field of knowledge to which an invention relates while the terms "states of the art" means everything concerning that art or field of knowledge which has been made available to the

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[87] See Ferodo Ltd. V. Ibeto Ind. Ltd. (supra). See also Omnia (Nig.) Ltd. V. Dyktrade Ltd. (2007) 15 NWLR (Pt.1058) 576. See also S. 5(2) Cap. T13 L.F.N. 2004, op.cit.
[88] S. 6 (2), ibid,.
[89] S. 60, ibid,.
[90] S. 1 of Patents and Designs Act, Cap. P2 L.F.N. 2004.
[91] S. 1 (1) ibid.

public anywhere and at anytime whatever (by means of a written or oral description, by use or in any other way) before the date of the filing application relating to the invention or the foreign priority date validly claimed in respect thereof, so however that an invention shall not be deemed to have been made available to the public merely by reason of the fact that, the invention, the inventor or his successor-in-title has exhibited it in an official or officially recognized international exhibition.[92]

Principles and discoveries of a scientific nature are not inventions for the purposes of the Patents and Designs Act. In order to have a right to a patent, in respect of an invention a person must have been granted a patent and a person can be granted a patent if he applies to the Registrar of patents[93]. Such a person is known as a statutory inventor, that is to say, the person who was first to file, or to validly claim a foreign priority for, a patent application in respect of the invention[94].

However, if the essential elements of a patent application have been obtained by the purported applicant from the invention of another person (or from that other persons successor-in-title) both to the obtaining of those essential elements and to the filing of the application, all rights in the application and in any patent granted in pursuance of it shall be deemed to be transferred to that other person or his said successor, as the case may be[95].

Where an invention is made in the course of employment or in the execution of a contract for the performance of specified work, the right to a patent in the invention is vested in the employer or, as the case may be, in the person who commissioned the work. However, where the inventor is an employee, then if his

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[92] S. 1 (2) ibid.
[93] S. 5 ibid.
[94] S. 2(1) ibid.
[95] S. 2(2) ibid.

contract of employment does not require him to exercise any inventive activity but he has in making the invention used data or means that his employment has put at his disposal; or the invention is of exceptional importance, he is entitled to fair remuneration taking into account his salary and the importance of the innovation[96] and the entitlement in question is not modifiable by contract and may be enforced by civil proceedings.

A person is not an inventor if he has merely assisted in doing work connected with the development of an invention without contributing any inventive activity[97]. Where a person succeeds in being granted a patent over an invention, that grant confers upon him the right to preclude any other person from doing any of the following acts-

i. Where the patent has been granted in respect of a product, the act of making, importing, selling or using the product or stocking it for the purpose of sale or use, and

ii. Where the patent has been granted in respect of a process, the act of applying the process or doing, in respect of a product obtained directly by means of the process[98].

It should be noted that that the rights under a patent only extends to acts done for industrial or commercial purposes[99] . A patent expires at the end of the twentieth year from the date of the filing of the patent application. It also lapses if the prescribed annual fees are not duly paid in its respect; though, a period of six

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[96] S. 2(4) ibid.
[97] S. 2(5) ibid.
[98] S. 6(1) ibid.
[99] S. 6(2) ibid.

months grace is allowed for the payment of the fees[100]. A patent may be declared null and void by the court on the application of any person, including a public officer acting in the exercise of his functions if among others, the subject of the patent is not patentable under the law, or if in respect of the same invention a patent has been granted in Nigeria as the result of a prior application or an application benefiting from an earlier foreign priority.[101]

With regard to Designs, section 12 of the Act is to the effect that any combination of lines or colours or both, and any three dimensional form, whether or not associated with colours, is an industrial design, if it is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a technical result. Designs are registerable if it is new, and not contrary to public order or morality[102]. The right to registration of a design is vested in the statutory creator, that is to say, the person who, whether or not he is the true creator, is the first to file, or to validly claim a foreign priority for an application for registration of the design[103]. Where a design is registered, the registered owner acquires the right to preclude any other person from reproducing the design in the manufacture of a product, importing, selling or utilizing for commercial purposes a product reproducing the design; and hold such a product for the purpose of selling it or of utilizing it for commercial purposes.[104]

A registered design is effective in the first instance for five years from the date of the application for registration, and on payment of prescribed fee may be renewed for two further consecutive periods of five years.[105] The court[106] can declare a registered design null and void on the application of any person,

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[100] S. 7 (1) and (2) ibid.
[101] S. (1) ibid.
[102] S. 13(1) ibid.
[103] S. 14 ibid.
[104] S. 19 ibid.
[105] S. 20 ibid.
[106] The Federal High court has original jurisdiction in matters of Patents and Designs. See section 26 of the Act.

including a public officer acting in the exercise of his functions if the design ought not to have been registered[107]. The court will, however, give the owner of the design an opportunity to be heard before granting the application to nullify the design.[108] The right created by the registration of a design can be assigned, transferred by succession or held in joint ownership.[109]

With the above provisions, it can be said that Nigerian laws have an acceptable level of protection for investors' property, including intellectual property. However, it is also known that intellectual property infringement is high in the country, with Nigeria being estimated to be the largest market for counterfeit products in Africa[110]. This situation has been attributed to factors, including weak law enforcement[111].

4.6 INCENTIVES FOR INVESTORS.

Incentives are any measurable economic advantage afforded to specific enterprises or categories of enterprises by or at the direction of the government in order to encourage them to behave in a certain manner.[112] It is distinct from subsidy, which is financial aid granted by a government or other organization to an individual or legal entity for something that is considered to be of some advantage to the public. Incentives are used by governments to attract investment, to steer investments into favourable industries or regions, or to influence the character of

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[107]. S. 22 the Act, op cit.
[108] Ibid.
[109] S. 24, ibid.
[110] Anonymous. UNCTAD: Investment Policy Review for Nigeria. Op.cit., P.52.
[111] Ibid.
[112] Anonymous. Incentives and foreign Direct Investment. DTCI, 128, Current Studies, Series A, No.30. UNCTAD, United Nations, New York, 1996, p. 3.

an investment e.g. when technology incentive investment is being sought, it can be addressed to foreign investors, local investors, or to both.[113]

In Nigeria, there are several types of incentives addressed to both local and foreign investors depending on considerations such as, the industry or sector, the location of the investment and so on. Whatever classification that is given to the various types of incentives, what is common to them is the fact of encouraging investment by the government. In this work however, incentives are classified into four: fiscal, financial, incentives in the export processing zones, and incentives of other nature. These will be discussed presently.

i. Fiscal Incentives.

These are tax-related measures, allowances and other incentives the overall objectives of which are to reduce the incidence of host country's taxation policy on foreign investors. Fiscal incentives affect after-tax profits, the flow of funds and the cost of capital relative to labour, land and energy inputs in the foreign investment activities.

There is tax exemption on interest accruing to any foreign company on any loan worth not less than N150, 000 granted by such a company to any person for the purposes of carrying on any business, trade, profession or vocation, if the loan is repayable in not less than 10 years[114]. However, where the loan is repayable within less than ten years but not less than five years, the interest enjoys 50% tax free of the tax ordinarily chargeable[115].

Moreover, interest on any loan granted by a bank to a company engaged in:

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[113] Ibid, p.1.
[114] S. 11 of the Companies Income Tax Act, Cap. C21, L.F.N. 2004.
[115] Ibid.

a. agricultural trade or business; or

b. the fabrication of any local plant and machinery ; or

c. as working capital for any cottage industry established by the company under the Family Economic Advancement programme, is exempted from tax in as much as the moratorium is not less than eighteen months and the rate of interest is not more than the base lending rate at the time the loan was granted[116]. There is also exemption from tax:

   (a) dividend received from small companies in the manufacturing sector in the first five years of their operation;

   (b) dividend received from investments in wholly export-oriented business;

   (c) the profits of any Nigerian company in respect of goods exported from Nigeria, provided that the proceeds from such export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and spare parts;

   (d) the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export, provided that the exporter shall give a certificate of purchase of the inputs of the exportable goods to the seller of the supplies[117].

There are also tax incentives for investment made by any company for the purpose of research and development[118]. Where a company has incurred an expenditure on plant and equipment, there is also an investment allowance for that company[119].

In addition, where a company is categorized as a pioneer company, in line with the provisions of the law[120], such a company is entitled to a tax relief period of three

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[116] S. 11 (7), ibid.
[117] S. 23 (1), ibid.
[118] S.26, ibid.
[119] S. 32 (1), ibid.

years. This period is subject to extension for another two years, if the requisite application is made[121].

For a company engaged in gas Utilisation (downstream operation), it is entitled to the following incentives, among others:

a. an initial tax-free period of three years, which may be renewed for another two years.
b. Tax free dividends during the tax free period, where-
    i. The investment for the business was in foreign currency: or
    ii. The introduction of imported plant and machinery during the period was not for less than 30% of the equity share capital of the company[122].

ii. Financial Incentives.

These involve the provisions of funds directly to private investment enterprises for their operations, especially to defray some unavoidable costs. Financial incentives have an immediate impact on cash flow and liquidity. Besides, they tend to favour capital intensity since they are direct subsidies in the purchase of equipment and/or reduce capital costs[123].

There are several provisions entitling an investor to some financial assistance. Thus, there is a fund known as the Export Development Fund (the Fund), which

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[120] S. 1(1) Industrial Development (Income Tax) Act, Cap. I7, L.F.N. 2004.
[121] S. 10(1), (2) and (3), ibid.
[122] S. 39 of Companies Income Tax Act, op.cit.
[123] Ibid, p. 418.

consists of such money as the federal government may from time to time, pay into it and contributions made by private investor exporters[124]. The fund is for the provision of financial assistance to private sector exporting companies to cover part of their initial expenses in respect of export promotion activities, namely—

(a) participation in training courses, symposia, seminars and workshops in all aspects of export promotion;
(b) advertising and publicity campaigns in foreign markets;
(c) export market research and studies;
(d) product design and consultancy;
(e) participation in trade missions, buyer-oriented activities, overseas trade fairs, exhibitions and stores promotion;
(f) cost of collecting trade information;
(g) organisation of joint export groups and mutual export guarantee associations;
(h) backing up the development of export oriented industries.[125]

In addition to the above, there is also an Export Expansion Grant Fund, (the Expansion Fund) which is for the purpose of providing cash inducement for exporters who qualify to benefit from it based on the value of their semi-manufactured or manufactured products as prescribed by order, from time to time, made by the Nigerian Export Promotion Council.[126] This is to enable exporters:

(a) increase their volume and value of exports; and
(b) diversify export products and coverage.[127]

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[124] S. 4(1) and (2) of Export (Incentives and Miscellaneous Provisions) Act, Cap. E19, L.F.N. 2004.
[125] S4(3),ibid.
[126] S.5(1)and(2),ibid.
[127] Ibid.

There is yet another fund known as the Export Adjustment scheme Fund (the Adjustment Fund).[128] This fund serves as a supplementary export subsidy or as an additional fund dealing with:

(a) high cost of production arising mainly from infrastructural deficiencies; and
(b) other factors beyond the control of the exporter.[129]

An exporter may also benefit from such other incentives as Duty Draw-back, Duty suspension, or manufacture-in-bond shares and whereby an exporter is interested in benefiting from all or any of these, he shall direct his application for participation to the Nigerian Export Promotion Council[130].

iii. Incentives in the Export Processing Zones.

There are export processing zones in the country. The legal regime regulating operations in the zones is the Nigeria Export Processing Zones Act[131]. This Act provides that approved enterprises operating within any of the Export processing Zones in the country shall be exempted from all Federal, state and Government taxes, levies and rates.[132] Further, approved enterprise within a zone is entitled to the following incentives:

(a) legislative provisions pertaining to taxes, levies, duties and foreign exchange regulation are not applicable within the Zones;
(b) repatriation of foreign capital investment in the Zones at any time with capital appreciation of the investment;
(c) remittance of profits and dividends earned by foreign investors in the Zones;
(d) no import or export licenses shall be required;

[128] S.6(1), ibid.
[129] S.6(2),ibid.
[130] S.7, ibid.
[131] Cap. N107 L.F.N. 2004.
[132] S. 8, ibid.

(e) up to 25% of production may be sold in the customs territory against a valid permit and on payment of appropriate duties;

(f) rent free land at construction stage ; thereafter rent shall be as determined by the authority, that is, the Nigerian Export Processing Zones Authority, established under the Act[133];

(g) up to 100% foreign ownership of business in the zones are allowed

(h) foreign managers and qualified personnel may be employed by companies operating in the zones.[134]

It is instructive that this Act being a 1991 law precedes the full liberalisation policy of the country, which necessitated the enactment of such laws as the Nigerian Investment Promotion Commission Act, 1995 and the Foreign Exchange (Monitoring and Miscellaneous Provision) Act, 1995.

iv. Incentives of other Nature.

Incentives of other nature that an investor can enjoy include the right to retain all his foreign proceeds in foreign currency in his bank account in Nigeria[135]. In addition, an investor can also benefit from incentives relating to Duty Draw-back, Duty Suspension, or Manufacture-in-bond shares if he applies to the Nigerian Export Promotion Council.[136]

Furthermore, where a company incurs capital expenditure on the provisions of facilities such as electricity, water, tarred road or telephone for the purpose of a trade or business which is located at least 20 Kilometres away from such facilities

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[133] Ibid.
[134] S. 18(1) of the Act.
[135] S. 1(1) Cap. E19 L.F.N. 2004, op. cit.
[136] S. 7 ibid.

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provided by the government, the company is allowed what is called "rural investment allowance" at the following rate:

(a)	where there is no facilities at all - - -	100%
(b)	where there is no electricity - - - -	50%
(c)	where there is no water - - - -	30%
(d)	where there is no road - - - -	15%
(e)	where there is no telephone - - - -	5%[137].

Apart from the above incentives, there are others provided by such laws as the Nigerian Investment Promotion Commission Act (NIPC Act)[138]. Under this Act, a foreign investor is guaranteed an unconditional transferability of funds through an authorized dealer, in freely convertible currency, of dividends or profits (net of taxes) attributable to his investment; payments in respect of loan servicing where a foreign loan has been obtained; and the remittance of proceeds (net of all taxes), and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to his investment[139]. In addition to this, any foreign currency purchased from the Autonomous Foreign Exchange Market[140] may be repatriated from Nigeria and is not to be subject to any further approval[141].

With the above categories and number of incentives, one can say that the Nigerian government has demonstrated her commitment to encourage investors through this medium. However it must be borne in mind that incentive is but only one of the things a prospective investor considers in deciding where to locate his investment. There are other factors, which as has been noted include efficient supply of

[137] S.34. ibid.
[138] Cap. N117 op.cit.
[139] S.24, ibid. see also S. 15 of Cap. F34, op,cit.
[140] Established under S. 1 of Cap. F34, op.cit.
[141] S.13, ibid.

electricity, functional infrastructures, security, good corporate governance as well as corrupt free society.

4.7 Privatization and Commercialisation of State- Owned Enterprises as a Consequence of Globalisation.

Another glaring effect of globalisation in Nigeria is the government's policy of divesting from hitherto state-owned enterprises (SOE) through her privatization programme. This policy is advocated by the proponents of globalisation as one of the several means a country can adopt to achieve economic reform geared towards growth and development. The privatization policy was anchored on a legal framework know as the Privatization and Commercialisation *Decree No. 25, 1988*[142]. *This Act established a body known as the Technical* Committee on Privatization and Commercialisation (the Privatization Committee or TCPC) whose functions, among other things, are to carry out all activities required to ensure the success of the privatization exercise, taking into account the need for balanced and meaningful participation by Nigerians and foreign interests in accordance with relevant laws of Nigeria[143].

As to commercialisation, a commercialized enterprise shall operate as a purely commercial enterprise and may fix the rates, prices, and charges for goods and services it provides[144]. Thus, the government, by that law, stopped subsidizing cost of the goods and services of those corporations and to that extent, the people were expected to more for such goods and services.

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[142] Cap. 369 L.F.N. 1990.
[143] S. 4(1) ibid.
[144] S.13, ibid.

In 1993, the TCPC having carried out the first phase of the programme, submitted a final report showing that it has privatized eighty-eight (88) out of a total number of 111 enterprises it was mandated to privatize. Based on the recommendations of the TCPC, the Federal Military Government promulgated the Bureau for Public Enterprises Act, 1993, which repealed the 1988 Act, and set up the Bureau for Public Enterprises (BPE) to carry on with the implementation of other phases of the of programme[145].

Another Act known as the Public Enterprises (Privatization and Commercialisation) Act was enacted in 1999 with a commencement date of 31st December, 1998[146], under which was created the National Council on Privatization (TCPC) under the chairmanship of the Vice- President of Nigeria. The functions of the Council are as provided in section 11 of the Act and include, to determine the political, economic and social objectives of privatization and commercialisation of public enterprises; approve policies on privatization and commercialisation; approve public enterprises to be privatized or commercialized; review from time to time, the socio-economic effects of the programme of privatization and commercialisation and decide on appropriate remedies. The Act also established a body which is also known as the Bureau of Public Enterprises (BPE) whose functions are essentially to advise, provide essential support to the Council as well as ensure the success of the privatization exercise, which is still ongoing.

Privatization and commercialisation of SOEs appears to be in agreement with capitalist philosophy as expressed by the great economist, Adam smith, who have been quoted to have said,

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[145] Igbuzor, O. Privatisation in Nigeria: Critical Issues of Concern to Civil Society . Being a Paper Presented at Power Mapping Roundtable Discussion on the Privatisation Programme. Organised by Socio-Economic Rights Initiative (SERI) Held at Niger Links Hotel, Abuja on 30th September, 2003. p.4.

[146] Cap. P38 L.F.N. 2004.

> In every great monarchy ..., the sale of the crown lands would produce a very large sum of money, which if applied to the payment of the public debts, would deliver from mortgage much greater revenue than any which those lands have afforded to crown... When the crown lands had become private property, they would, in the course of a few years, become well improved and well cultivated[147].

This pure capitalist view of economic well being appears to have informed the policy of privatisation of state -owned enterprises by the government. It is on record that prior to the period of SAP and the resultant privatization, there were about 1,500 state-owned enterprises belonging to the federal, states and local governments[148]. Most of these were acquired during the indigenization period[149]. Although, there may be some merit in the argument that these SOE operated as conduit pipes for waste of government money[150], the essence of establishing those enterprises was not necessarily to make profits. In fact, among the reasons for establishing some of them are: to ensure national security, and the need to balance profit maximization with the provision of social welfare and services to the citizens[151]. It is our argument that privatizing SOEs on the ground that those public servants who manage them engage in wastages of government money is neither the only remedy available to government nor the best bearing in mind the reasons for their acquisition in the first place. It is our view that the problem of wastages or underperformance can also be solved by effective implementation of relevant laws by punishing those whose conducts fall short of the provisions of relevant laws, where it is established that there was a case of corrupt practice. On

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[147] Uzochukwu, A. Privatisation Models: A Comparative Experience. In: Onyekpere, E. (ed.) Readings on Privatisation. Socio-Economic Rights Initiative (SERI), Lagos. (2003) p. 52.
[148] Anonymous. UNCTAD: Investment Policy Review for Nigeria. Op.cit. p.5.
[149] Bolodeoku, I.O. The search for global capital: What has privatization got to do with it, what are the challenges for Nigeria. The Journal of Private and property law, Unilag. (2003) Vol. 23, p. 93 – 118 at p. 96.
[150] Akume, A.A. Economic Deregulation and Corporate Investments in Nigeria. In:Agom, A. and Igoche, P.O. (ed.) Ogebe and the Law. Legal Essays in Honour of Justice James Ogenyi Ogebe (Hon. Justice of the Supreme Court of Nigeria). Department of Commercial Law, Faculty of Law, ABU, Zaria, (2010) pp.321-354 at 322.
[151] Ibid, p. 324.

the other hand, underperformance may be as a result of incompetence on the part of the public servant and this can be solved by ensuring that employments into such SOEs are strictly on merit while periodic training and retraining should be maintained. The present writer is not against privatization as a policy per se, rather, he is of the opinion that those enterprises that were established for welfare purposes or for the sake of the security of the State should not be privatized, otherwise these aims would be defeated. This is more so when it is borne in mind that majority of Nigerians are still so poor that they would not be able to afford these products once profit maximization philosophy of private investors become the determinant of their prices. At any rate it should be borne in mind that our Constitution provides that the State shall control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity[152]. It is also the provision of the Constitution that the State shall not only operate but also participate in the economy, particularly in the major sectors of the economy[153].

Thus, it is submitted that the argument that the remedy is to sell the SOEs, without discrimination, as a result of wastage of government money and corruption is akin to arguing that owing to corruption in the civil service, the government should also privatise the civil service. As it were, the present writer is not aware of any country that has sold off her civil service or even advocated its privatization as a result of corruption.

4.8 Dispute Resolution Mechanisms.

In circumstances involving human relations and interactions, especially where money and interests of other nature are commonplace, it is reasonable to

[152] S. 16 (1) of the Constitution of Federal Republic of Nigeria, 1999 (as amended).
[153] Ibid.

expect that disputes will arise. This is more so in this era of globalisation with its attendant aggressive pursuit of economic growth by countries, as is the case with Nigeria, through encouragement of investment from both within and outside the country. With the probability of disputes arising, whether between individuals, Corporate bodies, government or between any two or more legal persons, it is the expectation of stakeholders that such disputes be resolved in the interest of all parties. It is these mechanisms for settling or resolving such disputes that this segment seeks to examine. The examination will be looked at from two broad angles, Litigation as a mechanism on the one hand, and non-Litigation mechanism commonly called Alternative Dispute Resolution **(ADR)** on the other hand.

4.8.1 Litigation.

Litigation as used here means the process of carrying on a lawsuit in law courts established by law with a view to settling a dispute between not less than two parties. This process is very well recognized under Nigerian law, and fundamentally, it is grounded in the Constitution[154]. It functions through the instrumentality of the courts, and courts here mean both the conventional and non-conventional courts, such as tribunals and other specialized courts. Given this division of litigation as a mechanism into two, its discussion will be based on such compartmentalization.

i. Litigation in conventional courts.

Nigeria operates a democracy with a Constitution as the grundnorm. The country has an independent judiciary which has its foundation in the

[154] S. 6 ibid .

Constitution[155] . Accordingly, the judicial powers of both the Federation and the component States are vested in the courts established by the Constitution and those established in line with its provisions.[156]. For purposes of clarity, these courts include:

(a) The Supreme Court;
(b) The Court of Appeal;
(c) The Federal High Court;
(d) The High Court of the Federal Capital Territory;
(e) The High Court of the component States;
(f) The Sharia Court of Appeal as well as the Customary Court of Appeal both of the Federal Capital Territory and the component States[157].

The above listed Courts constitute Nigeria's Superior courts of record[158] and they are directly established by the Constitution. However, there are others which are established, in accordance with constitutional provisions[159], either by the National Assembly or States' legislatures. They can be described as inferior courts being not one of those listed by the Constitution as superior courts. The judicial powers of the superior courts extend, notwithstanding anything to the contrary in the Constitution, to all inherent powers and sanctions of a court of law. They also extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the

[155] S. 6, ibid.
[156] S. 6 (1) and (2), ibid.
[157] S. 6 (5), ibid.
[158] S. 6 (3), ibid.
[159] S.6 (4),ibid.

determination of any question as to the civil rights and obligations of that person[160].

Further, the Constitution in realisation of the saying that justice delayed is justice denied also makes provisions relating to inordinate delays in dispensing justice by the courts. The general law in this regard is to the effect that courts should deliver its decisions not just in writing but within ninety days after the conclusion of evidence and final addresses by the parties[161]. Borrowing from this, the various Rules of Civil Procedure in the High Courts have provisions relating to quick dispensation of justice. These include, front loading[162], Settlement of Issues[163], and the Undefended List Procedure[164]. All these provisions are clearly geared towards ensuring that there is not just the right of access to justice for litigants but that there is minimum delay in delivering same. These provisions notwithstanding, the courts are still bogged down with inordinate delays. In fact, it is common knowledge among advocates that litigants spend up to ten years or more prosecuting a single case conclusively to the Supreme Court while it takes an average of five years for a case to be heard and decided by the Court of Appeal.

The advantages of this mode of settling disputes include the feelings of certainty that one's case has been treated and decided by a court of competent jurisdiction and that whatever decision reached can only be overturned by an appellate court. Its disadvantage can be seen in the light of delay and huge financial cost associated with it. It is also basically technical in nature and these technicalities can in some cases, defeat an otherwise good case. However, in

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[160] S. 6 (6) (a) and (b), ibid.
[161] S. 294 (1), ibid.
[162] Order 3 Rule 3 of the Federal High Court (Civil Procedure) Rules, 2009, Order 4 Rule 15 of Federal Capital Territory High Court (Civil Procedure) Rules, 2004.
[163] Order 33 the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2004.
[164] Order 12 of the Federal High Court Rules, op.cit and Order 21 of the FCT Rules, op cit

apparent recognition of some of these disadvantages, the parliament has sought to cure them by creating non-conventional courts that are designed to ensure that disputants can resolve their disputes in a manner that is faster, less cumbersome and low in financial cost, and it is to these that we turn our attention.

ii. Litigation in Tribunals.

Tribunals are specialized courts established for particular purposes with the aim being to achieve faster justice delivery. One of the tribunals vested with jurisdiction to adjudicate on matters relating to investment is the Investment and Securities Tribunal (IST). We will examine this tribunal in little more detail.

The Investment and Securities Tribunal **(IST)** was established by the Investment and Securities Act[165] (ISA). The Tribunal consists of nine persons one of whom is the Chairman who must be a legal practitioner of not less than 15 years experience[166]. The jurisdiction of the Tribunal is as provided by section 234 of the Act and in particular, it has power to adjudicate on matters relating to-

(a) the interpretation of any law, enactment or regulations to which the Act applies;

(b) disputes between the Commission and a Securities Exchange or Capital Trade Point;

(c) Disputes between capital market operators and the securities exchanges or capital trade point;

(d) Disputes between capital market operators;

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[165] Cap. 124 L.F.N. 2004 see also S. 224(1) of the Act.
[166] S.225 (2), ibid.

(e) Disputes between capital market operators and their clients; and

(f) Disputes between quoted companies and the regulators or the securities Exchanges.

From the above, it is clear that the tribunal's jurisdiction is limited to civil matters relating to disputes and controversies in the capital market[167]. Its jurisdiction does not extend to criminal cases and this is made abundantly clear by subsection (3) of Section 237 of the Act. It is to the effect that any proceeding before the Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil court for all purposes. It is instructive that the Tribunal has exclusive jurisdiction over matters covered in all the areas listed under section 234 of the Act as well as those that may be specified by the Minister of Finance under the power conferred on him by section 224 (2) of the Act. This is so, at least in the language of the Act. In fact, the Act expressly provides as much in its section 242, where it says:

> Save as provided elsewhere in this Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred on the tribunal by or under this Act.

In addition, the Act provides that an award or judgment of the Tribunal shall be enforced as if it were a judgment of the Federal High Court[168] upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court and that the Tribunal shall dispose of any matter before it finally within three

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[167] S.237(3), ibid.
[168] S. 241 (3), ibid.

months from the date of the commencement of the action[169]. A party dissatisfied with the decision of the Tribunal may appeal it on points of law to the Court of Appeal within thirty days after the date on which such decision was given[170]. These provisions are obviously meant to enable the tribunal dispense cases with minimal delay and expense.

Generally speaking, these are commendable provisions; however, some of them have been criticized. Specifically, it has been argued that vesting the Tribunal with the status of a Federal High Court[171] is unconstitutional. Accordingly, a learned writer[172] opines that given that the Federal High Court is of equal status with the State High Courts[173] and they are superior courts of record,[174] the effect vesting the Tribunal with the status of the Federal High Court is the creation of another superior court of record contrary to the provisions of section 6(4) (a) of the Constitution which does not empower the National Assembly to create superior courts of record.[175] Another Learned writer[176] had argued that as both the Constitution and the ISA were products of the same enactment process, vesting the latter with such a status must have been a conscious act otherwise steps would have been taken since 29th May, 1999, when the Constitution came into force, to amend or repeal the ISA especially, provisions relating to the jurisdictional conflict between the Federal High Court and the Tribunal.[177] In reaction to this argument,

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[169] S. 236 (5), ibid.
[170] S. 243 (1), ibid.
[171] S.241(3), ibid.
[172] Ali, H.L. The Internationalisation of the Nigerian Capital Market and the Dynamics of Modern Securities Fraud and Regulation. ABULJ (2006), Vols. 24-25, pages 202-228 at 219-220.
[173] S. 1 of the Federal High Court Act, Cap. F12, L.F.N., 2004.
[174] S. 6(3)and (5) of the Constitution, op cit.
[175] Ali, H.L. op. cit.
[176] Udora, C.A. The machinery for dealing with grievances in the Nigerian capital market: A paper delivered at the workshop on Opportunity in the Nigerian Capital Market for the Development of Kebbi State, 3rd October 2001. Cited in Ali, H.L. Op. cit.
[177] Udora, C.A., ibid.

Dr. Ali quoted the statement of an American Jurist, Chief Justice John Madison[178] that,

> It is a proposition too plain to be contested that the Constitution controls legislative acts repugnant to it, or to imagine that the legislature may alter the Constitutions by an ordinary act. Between these alternatives, there is no middle ground. The Constitution is either superior, paramount law... or it is on a level with ordinary legislative Acts... if the former part of the alternative is true, then a legislative act contrary to the Constitution is not law...[179]

He then took the view that the position taken by Udora[180] might have been influenced by business convenience, rather than law as his argument would hardly be tenable once subjected to judicial interpretation. He goes on to agree with another learned writer who had opined that:

> The National Assembly itself is the creation of the Constitution and cannot allocate powers to itself beyond what the Constitution has already allocated. Any such ultra vires exercise is void intoto and out rightly illegal. The establishment of the Investment and Securities Tribunal and the jurisdiction conferred on it is therefore unconstitutional in its entirety the enabling provision in the ISA being inconsistent with the Constitution.'[181]

One cannot but agree with the above submissions of both Ali, and Akume. This is reinforced by the provisions of the Constitution voiding any law that is inconsistent with it, at least to the extent of such inconsistency.[182] There is no doubt that the provisions of ISA equating the status of IST with that of the Federal High Court is inconsistent with the provisions of section 6(1), (4)(a) and(5) (c) of the Constitution.

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[178] Ali, H.L. fn.19 at p. 121.
[179] (1803) cranch 137.
[180] Udora C.A. op. cit..
[181] Akume, A.A. The Unconstitutionality of the Investment and Securities Tribunal in Nigeria: In Benue State University Law Journal (2004). Vol.3, p.51. Quoted and cited in Ali, H.L. op cit.
[182] S. 1(3) of the Constitution op.cit.

With these Constitutional provisions in mind, it can be argued that appeals from the Tribunal can validly lie in the High Court of a State or the Federal High Court, as the case may be, instead of the Court of Appeal as provided by the ISA.

As to clothing the Tribunal with exclusive jurisdiction over matters listed within its sphere, the Act has also contravened the clear provisions of the Constitution. This is in section 272(1) where it provides:

> Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

A similar provision in the Constitution of Nigeria, 1979[183] had been interpreted vis-à-vis the provisions of section 41 of the Land Use Act[184], which purportedly ousted the original jurisdiction of the High Court in matters relating to land in rural areas in the celebrated case of Adisa V. Oyinwola[185].

The supreme court also held in the recent case of National Union of Electricity Employees V. Bureau of Public Enterprises[186], where one of the issues for determination was whether Decree 47 of 1992 which vests exclusive jurisdiction in the National Industrial Court to hear and determine trade disputes (including inter and intra union disputes) is inconsistent with Section 272 of the 1999 Constitution, that,

> the mere fact that Decree No. 47 of 1992 arrogated to the National Industrial Court the status of a superior court of Record does not make

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[183] S. 236 (1)of the Constitution of the Federal Republic of Nigeria, 1979, op.cit.
[184] Cap L5 L.F.N. 2004.
[185] (2000) 10 N.W.L.R. (PT.674) P. 116.
[186] (2010) 2-3 S.C. (PT.II) 27.

> the said National Industrial Court a Superior Court of Record having regard to the provisions of Section 6 (3) and (5) of the 1999 Constitution which has listed the only Superior courts of Record recognized and known to the 1999 Constitution which list does not include the National Industrial Court...that the implication therefore of conferring exclusive Jurisdiction in Trade Disputes on the National Industrial Court is to exclude the wide powers of the State High Court thereby manifesting a conflict or inconsistency between Decree No. 47 and Section 272 of the 1999 Constitution for which reason Decree No. 47 of 1992 cannot but be declared null and void to the extent of its inconsistency.

Thus, by parity of reasoning, it can be validly argued that irrespective of the provisions of section 242 of the ISA under consideration, one can approach the High Court of a State or the Federal High Court as the case may be for adjudication of a matter within the jurisdiction of the Tribunal and that an award or judgment of IST cannot be equated with the judgment of the Federal High Court, which is a superior court of record.

The Constitution is rumored to have been amended to reflect both IST and NIC as superior courts of record. However, research did not yield this amended version. It appears not to have been signed by the president. At any rate, it is necessary that the relevant portion of the Constitution be amended so that these specialised courts can perform their duties in line with the provisions of their enabling Acts.

With regard to the overall performance of the courts in dispute resolution, it has been shown that a positive feature of the Nigerian system is the courts' independence from government's pressure in disputes involving private investors, including the foreign ones[187].

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[187] Anonymous. UNCTAD: Investment Policy Review for Nigeria. Op.cit., P.51.

4.8.2 Alternative Dispute Resolution.

Alternative Dispute Resolution (ADR) is generally used to describe the methods and procedures used to resolve disputes either as alternatives to the traditional disputes resolution mechanism of the court or in some cases as supplementary to such mechanism. In other words these processes are designed to aid parties in resolving their disputes without the need for a formal judicial proceeding[188].

This term is associated with such dispute resolution options as, Negotiation, Mediation, conciliation, mini-trial, case resolution and other hybrid mechanisms. In this method of dispute resolution, the use of impartial interveners, who are referred to as "third parties" (no matter how many of them are involved in the dispute) or "neutrals" are usually involved[189].

Alternative dispute resolution evolved mainly as a result of some short-comings inherent in the conventional dispute settlement mechanism, litigation. It has been said that the adversarial system of justice is inadequate to serve as the only means of access to justice[190]. This opinion finds support in the remark of **Oputa JSC. (as he then was)** when he said,

> The administration of justice in our courts suffers from two major constraints, namely delay and expense. If it takes 7 -10 years to decide a case, a prospective litigant, may decide not to go to court at all. But the one thing that frightens litigants away from the court is the inordinate expense which has to be incurred with the result that a

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[188] Akinsanya, D.F. ADR-The New Trend for the Nigerian Legal Profession. MPJFIL, Vol.5, No.1, (2001) pp.1-13, at p. 5.

[189] Ibid.

[190] Goodluck, O.O. Administration of Justice: Abuja Multi-Door Courthouse. In: Agom, A. and Igoche, P.O. (ed.) Ogebe and the Law: Legal Essays in Honour of Justice James Ogenyi Ogebe (Hon. Justice of the Supreme Court of Nigeria) Department of Commercial Law, Faculty of Law, ABU, Zaria, (2010) pp. 111-126 at 112.

very large proportion of our countrymen are, as it were priced out of the legal system....[191]

With these clear imperfections with the traditional dispute settlement through litigation, it becomes acutely necessary for there to be found other ways of settling disputes. Nigerian laws make ample provisions for this other method of dispute settlements. This can be found in the Arbitration and Conciliation Act[192], (the Act), the Nigerian Investment Promotion Commission Act[193], the various Civil Procedure Rules of the High courts, as well as the Multi-Door courthouses of various states of the Federation. Although there are several methods of settling dispute through the ADR, we are going to restrict our discussion to two forms only, that is, Arbitration and Conciliation

i. Arbitration.

The learned authors of the Halsbury's Laws of England[194] defined arbitration as "a process used by the agreement of the parties to resolve disputes". They further explained that in arbitration, disputes are resolved with binding effect by a person or persons acting in a judicial manner in private, rather than by a national court of law that would have jurisdiction but for the agreement of the parties to exclude it[195]. On the other hand, the Arbitration and Conciliation Act[196] defines arbitration as "a commercial arbitration whether or not administered by a permanent arbitral institution." In the case of K.S.U.D.B. V. Fanz Const. Ltd.[197]the Supreme Court defined the term as "the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a

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[191] Ibid.
[192] Cap. A18 L.F.N. 2004.
[193] S.26, op.cit.
[194] Butterworths (2003) 4th ed. Vol. 2 (3), p. 2, para. 1.
[195] Ibid.
[196] Cap. A18 op.cit.
[197] (1990) 4 N.W.L.R. (PT.142) 1.

judicial manner, by a person or persons other than a court of competent jurisdiction". Thus it can be seen that arbitration is the reference of a dispute to a third party, other than the court or Judge, for determination.

Arbitration has been[198], categorized into four: Domestic, International, Institutional and Ad hoc. It is said that a domestic arbitration is one between persons resident or doing business in the same country and the contract, subject of arbitration, is to be performed in the same country. It is International if the parties to an arbitration agreement have their places of business in different countries or where the subject matter of the arbitration agreement relates to more than one country or where the parties expressly agree that any dispute arising from the commercial transaction between them shall be treated as an international arbitration. On the other hand, Institutional arbitration is one where parties provide in their contract for the arbitration to be conducted in accordance with the rules of a named arbitration agency or institution, such as the International Chamber of Commerce (ICC) in Paris, London Court of International Arbitration (LCIA), American Arbitration Association (AAA), the Arbitration Association of Stockholm Chamber of Commerce, the Asian-African Legal Consultative Committee (AALCC) and the Regional Centres for Arbitration in Kuala Lumpur, Cairo and Lagos. An Ad hoc arbitration arises where the parties in their contract agreement do not refer to arbitration rules of commercial arbitration administering agency or institution but is entered into after a dispute has arisen. The parties in

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[198] Ajomo, M.A. Arbitration Proceeding: Being the text of a paper presented at the 17th Advanced Course in Practice and Procedure at the Nigerian Institute of Advanced Legal Studies, Lagos on the 16th June, 1997. Cited in Peters, D. Alternative Dispute Resolution (ADR) in Nigeria: Principles and Practice. Dee-Sage Nigeria Ltd., Lagos (2004), p.54.

this case usually establish their own rules of procedure that may be made to fit the facts of the dispute between them[199].

The Arbitration and Conciliation Act has as its goals the unification of the legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation; and to make applicable the convention on the Recognition and Enforcement of Arbitration Awards (New York Convention) to any award made in Nigeria or in any contracting State arising out of International Commercial Arbitration[200]. The Law came into force in 1988 and has detailed provisions relating to Arbitration, Conciliation as well as International Arbitration and Conciliation. It allows the parties latitudes as to whether to submit to arbitration or not, the place for the arbitration[201], applicable language[202] and also the number of Arbitrators to be appointed under the agreement[203]. It is the provision of the Act that arbitration agreement shall be in writing[204], and that arbitration agreement is generally, irrevocable[205]. It is such that even where a party to an arbitration agreement has commenced an action in a regular court, with regard to a matter which is the subject of an arbitration agreement, any party to the arbitration agreement may apply to the court to stay the proceeding. This is subject, however, to the party seeking a stay having not taken any step in the matter beyond formal appearance. In this situation, the court has the discretion to stay proceedings in the action so filed after satisfying itself that:

(a) there is no significant reason why the matter should not be referred to arbitration in accordance with the arbitration agreement; and

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[199] Ibid.
[200] Long Title of Cap. A18, op. cit.
[201] S.16, ibid.
[202] S.18, ibid.
[203] S. 6,ibid.
[204] S. 1,ibid.
[205] S.2, ibid.

(b) the applicant was at the time when the action was commenced and still remains ready and willing to do all things necessary for the proper conduct of the arbitration[206].

In K.S.U.D.B. V. Fanz Construction Co. Ltd.[207], it was also held that where no contrary intention is expressed and where such a provision is applicable, every arbitration agreement is deemed to contain a provision that the award is to be final and binding on the parties as well as any person claiming under them. Apart from the exception created by the above decision of the Court, the binding nature of arbitral awards is still subject to other exceptions. This can be by way of the award being set aside by the court and it can be so where an arbitrator or umpire has misconducted himself or an arbitration or award has been improperly procured[208]. These exceptions to the general law notwithstanding, arbitration is without doubt, one of the effective ways of settling investment disputes and it is noteworthy that Nigerian law recognizes it as such. Advantages of this method of settling dispute include the rights of the parties to choose venue, the arbitrator as well as the applicable law. On the other hand, its disadvantages can be seen in its increasing tendency to be technical, formal, adversarial, as well as increasing cost in money terms, just as the courts.

ii. Conciliation.

The Act has no definition of the term, conciliation. However, the Black's law Dictionary defines it as "A process in which a neutral person meets with parties to a dispute and explores how the dispute might be resolved; especially a relatively unstructured method of dispute resolution in which a third party

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[206] Ibid, S. 5. See also MISR Nigeria Ltd. V Assad (1971) N.S.C.C 186, N.P.M. Co. Ltd. V. Compaine Noga D'Importation (1971) N.S.C.C. 226.
[207] Supra.
[208] Ibid.

facilitates communication between parties in an attempt to help them settle their differences"[209]. It is a method often used in volatile conflicts and in disputes where the parties are unable, unwilling or unprepared to come to the negotiating table to settle their differences[210].

The Arbitration and Conciliation Act[211], provides that parties may seek amicable settlement of any dispute in relation to their agreement by conciliation in line with the provisions of the Act[212]. In such a case, the party wishing to initiate conciliation shall send to the other party a written request to that effect[213]. Where the request to conciliate is accepted, the parties shall refer the dispute to a conciliation body consisting of one or three conciliators. The conciliation body shall be appointed jointly by the parties where it consists of one conciliator, but if it consists of three conciliators, one conciliator shall be appointed by each party and the third shall be appointed by the parties jointly[214]. Parties have the choice of appearing in person before the conciliation body or have legal representation[215]. When the conciliation body has examined the case and heard the parties, it shall, if necessary, submit its terms of settlement to the parties. Where the parties agree to the terms of settlement submitted to them, the conciliators shall draw up and sign a record of settlement. However, if the parties reject the terms of settlement submitted, they may submit the dispute to arbitration in accordance with any agreement between them or take any action in court as they deem fit. It is instructive to note that nothing in connection with the conciliation poceedeings

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[209] Op.cit, page, 307.
[210] Ibid.
[211] Op. cit.
[212] S.37, ibid.
[213] S.38, ibid.
[214] S.40, ibid.
[215] S.41, ibid.

shall affect the legal rights of the parties in any submission to arbitration or any action taken by them[216].

This process is geared towards achievement of an amicable settlement of the dispute with the assistance of a Neutral Conciliator who is respected by both parties. In this sense, it is distinguished from arbitration in that the conciliator does not make decisions for the parties; rather he simply assists the disputants in reaching an agreement. This is usually achieved by the conciliator proposing solutions for the parties to weigh and consider.

As to the advantages of conciliation, one can say that as the reaching of agreement is basically the making of the parties themselves, and not imposed, enforcement is likely to be a lot much easier. In addition, parties are more likely to preserve the good business relationship that existed between them than would be the case with arbitration or litigation[217]. It is also ordinarily cheaper and less technical than both litigation and arbitration.

As to its disadvantages, one can say that where it fails, there would certainly be a waste of resources that was employed in the process. It is also a disadvantage that the conciliator cannot make a binding award as is the case with arbitration.

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[216] Ibid, 42(2).
[217] Peters, D. op. cit.

CHAPTER FIVE: CONCLUSION.

5.1 SUMMARY.

This Thesis in the main is an attempt to analyse the effects of globalisation on Nigerian investment laws and policies. It dwells essentially on such issues as the meaning and thrust of globalisation, Agents of globalisation, Arguments about globalisation, globalisation and Nigerian economic policies, as well as the effects of globalisation on Nigerian economy. Other issues which it examined include trends in foreign investment in Nigeria, which addresses such things as direct investment, types of direct investment, direct investment inflows to Nigeria from 1970 to the present era, portfolio investment, portfolio investment in Nigeria from 1986 to the present era, benefits of foreign investment, negative effects of foreign investment, determinants of foreign investment, trends in investment laws and policies, immediate post independent era, the period of indigenization and protectionism, the era of deregulation and liberalism, entry requirements, requirements for technology transfer and skill acquisition, protection of intellectual property, incentives, disputes resolution mechanisms, litigation as well as alternative dispute resolution.

5.2 FINDINGS.

In the course of conducting this research, findings were made. These are broadly categorized into three; consisting of findings on the effects of globalisation on laws, policies, and foreign investment in the country.

Firstly, with regard to the effects of globalisation on the laws relating to investment, it was found that globalisation brought about the liberalisation of the

laws to allow inflow of foreign capital either in the form of foreign direct investment (FDI) or foreign Portfolio investment (FPI). This brought about the repeal of those laws that were seen as obstacles to inflow of foreign investment. Among these laws are the Exchange Control Act of 1962, the Nigerian Enterprises Promotion Acts of 1972, 1977 and 1989 as well as the Securities and Exchange Act, of 1988. Among those that were enacted to facilitate the inflow of foreign investment are such laws as the Nigerian Investment Promotion commission, Act, (NIPC Act) the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, both of 1995, the Investment and Securities Act, enacted in 1999 and the Public Enterprises Privatisation and Commercialisation Act, 1999

. The latter law was actually a re-enacted version of the Privatization and Commercialisation Act of 1988, itself a result of globalisation.

With particular regard to FDI, NIPC Act, provides that a non-Nigerian may invest and participate in the operation of any enterprise in Nigeria. Thus, Nigeria's investment laws are no longer discriminatory with regard to the right of a foreigner to invest in any enterprise of his choice. This is unlike the position prior to globalisation when laws like the Nigerian Enterprises Promotion Act of 1972 were in force. This law made provisions restricting foreigners from investing in selected areas of the economy by grouping business enterprises into three schedules. Out of these schedules, the first schedule was exclusively preserved for Nigerians. In addition, Nigerians were to have at least 60% equity participation in the businesses listed in the second schedule while in the third schedule; Nigerians were to have at least 40% of the equity participation in the enterprises listed therein. The law has been repealed by the Nigerian Investment Promotion Commission Act, 1995. The latter law liberalized investment in Nigeria and allows for 100% ownership of

investment by foreigners in any sector of the economy except those listed in section 31 of the Act and termed, "the negative list".[218]

As to portfolio investment, the current position was found to be a radical change from the regime of protectionism when the Exchange Control Act was operative. According to that law, persons were not allowed, except with the permission of the Minister of Finance, to transfer any security or create or transfer any interest in a security; to or in favour of a person resident outside Nigeria; issue, whether in Nigeria or elsewhere, any security which is registered or to be registered in Nigeria to a person resident outside Nigeria, or acquire or dispose of any foreign security[219]. In accordance with these provisions, someone who was not resident in Nigeria could not have company shares or even warrants for dividends made out for him without the Minister's permission.

These provisions of the law have been altered to reflect the current trend in an era of globalisation. Thus, section 26 of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, the extant law in that regard provides as follows:

(1) A person whether-

a. Resident in or outside Nigeria; or
b. A citizen of Nigeria or not,

May deal in, invest in, acquire or dispose of, create or transfer any interest in securities and other money market instruments whether denominated in foreign countries in Nigeria or not.

(2) A person may invest in securities traded on the Nigerian capital market or by private placements in Nigeria.

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[218] See also S.17 of the Act.
[219] S. 10 of Exchange Control Act.

Further, prior to the period of globalisation, the law was to the effect that, except with the permission of the Minister of Finance, no person shall-

(a) make any payment to or for the credit of a person outside Nigeria; or

(b) make any payment to or for the credit of a person resident in Nigeria by order or on behalf of a person who is resident outside Nigeria or;

(c) make any payment whatsoever in respect of any loan, bank overdraft or other credit facilities outside Nigeria; or

(d) Place any sum to the credit of any person resident outside Nigeria[220].

These provisions have also been altered in line with the dictates of globalisation. Accordingly, the extant law in this regard is to the effect that no person shall be required to declare at the port of entry into the country any foreign currency unless its value is in excess of **US$5, 000.00** or its equivalent, and where it is in excess of **US$5,000.00** or its equivalent, whether it is being imported into or exported out of Nigeria, shall be declared for reasons of statistics only[221]. In addition, any person may invest in any enterprise or security with foreign currency or capital imported into the country through an, authorized Dealer[222], either by telegraphic transfer, cheques or other negotiable instruments and converted into the naira in the approved market.[223] These moneys that were imported into the country

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[220] S. 7, ibid.

[221] S. 12 of cap.34 L.F.N. 2004, op.cit.

[222] S. 41 ibid. Authorized Dealer Means any bank licensed under the Banks and Other Financial Institutions Act, and such other specialized bank and issued with license to deal in foreign exchange.

[223] Approved market means the Autonomous Foreign Exchange Market established by the Act

for investment also enjoy unconditional transferability, through an Authorized Dealer, with regard to:

a. Dividends or profits (net of taxes) attributable to the investment;

b. payments in respect of loan servicing where foreign loan has been obtained;

c. the remittance of proceeds (net of taxes) and other obligations in the event of sale or liquidation of the enterprises or any interest attributable to the investment.[224]

These are further improvements on the provisions of section 14 of the Second-Tier Foreign Exchange Market Act, which was enacted in 1986 at the start of Nigeria's involvement in the globalisation phenomenon. The later law, like the Exchange Control Act, also subjected the repatriation of funds lawfully imported into the country for investment purposes to the approval of the Minister of Finance.

Another effect of globalisation on the relevant laws is the enactment of the Privatization and Commercialisation Decree in 1988. This law has been re-enacted as the Public Enterprises (Privatization and Commercialisation) Act of 1999. This Act, as the name suggests, is the law enabling the Federal Government to privatize and commercialize state-owned enterprises (SOEs) so that the government divests herself of her shares in some of the enterprises and also commercialize others to enable them operate as purely commercial ventures, fixing the rates, prices and charges for goods and services they provide[225].

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[224] S. 15 of Cap. F 34 op. cit. see also S. 24 of the NIPC Act.
[225] S. 8 of the Act.

Further, it was also found that globalisation has affected the country's adjudicatory laws relating to investment. Thus, the country embraced the current trend in dispute resolution whereby emphasis is on settlement of commercial dispute through alternative dispute resolution (ADR) methods, such as, arbitration, conciliation, mediation and so on, instead of the traditional dispute settlement through litigation. This informed the enactment of the Arbitration and Conciliation Act in 1988[226]. In addition, there are also provisions encouraging parties to resort to arbitration, and in cases involving foreign investors and any Nigerian government, to international dispute settlement mechanisms. This is evident in the provisions of section 26 of the NIPC Act.

This effort is said to be geared towards speedy dispensation of disputes and at a relatively reduced cost with the parties having the freedom to choose the venue for the settlement, the applicable laws, as well as the neutrals involved in settling the dispute. Thus, under globalisation, there is more emphasis on ADR than core litigation and where a foreign investor is a party there is more emphasis on international dispute settlement mechanism than national courts. These are clearly geared towards encouraging foreigners to invest in the country by assuring them that their interests would be protected even in matters of dispute resolution.

Secondly, it was also found that globalisation has affected Nigeria's investment policies in some important ways. These include the change of policy from that of welfarism to core capitalism. Prior to globalisation, the various levels of governments in the country engaged in establishment and management of business enterprises for reasons which include the need to balance profit maximization with the provision of social welfare and services to the citizens.

However, with globalisation, this policy was abandoned and the

[226] The Act is now designated Cap. A18 L.F.N. 2004

government adopted that of core capitalism with her privatisation and commercialisation programme. This programme which started in 1988 is ongoing and its aim is to divest the government of her shareholdings in the hitherto state-owned enterprises (SOEs) by privatising some of them and commercializing others, thereby turning them into profit-oriented ventures.

Additionally, it was found that as a result of globalisation, Nigeria liberalised her trade policy so that there is less restriction of importation of goods into the country, including those produced locally. It opened the country's borders to all manner of goods from the advanced economies of Europe, America and Asia in line with WTO rules and the IMF recommendations. Thus, foreign products were allowed to be indiscriminately imported into the country to compete with locally produced goods. This competition, it must be pointed out, was not favourable to the budding manufacturing sector. This was essentially because the foreign industrialists, whose products were allowed to flood Nigeria, enjoyed economies of scale which made their products cheaper than the locally produced ones, even when they were of higher quality. Meanwhile, local industries could not enjoy such economies of scale owing to Nigeria's low level of development. The result was the death of the country's manufacturing sector as well as large scale unemployment. In effect, Nigeria became a dumping ground for foreign manufactured goods.

Thirdly, it was also found that Nigeria's efforts to improve her business climate, by liberalising her investment laws and policies stems from her desire to attract foreign investors (FDI and FPI). It is the fundamental reason for the enactment of such laws as the Nigerian Investment Promotion Commission Act, 1995, the Foreign Exchange (Monitoring and Miscellaneous Provision) Act, 1995 as well as the Investment and Securities Act, 1999. It was also the reason for the change of

economic and investment policy from Indigenisation and protectionism to deregulation and liberalisation. However, the level of foreign investment attracted by Nigeria has been low compared to her resource base and large market size, a population of about 150 million people[227]. Further, the pattern of FDI that does exist in any significant level is skewed towards the extractive industries, Oil and Gas in particular[228]. This is complemented with the service industry, notably the telecommunications sector. There is a dearth of foreign investment of significance in the manufacturing as well as the agricultural industries. The position is the same with the transport as well as the building and real estate sectors[229]. Available data show that foreign direct investment forms a small percentage of the national gross domestic product (GDP), making up 2.4 percent in 1970, -0.81 percent in 1980, 6.24 percent in 1989 (the highest) and 3.93 percent in 2002[230].

Although, research shows that Nigeria ranks third in FDI inflows to African countries, with South Africa and Egypt being first and second in that order, it is also known that Africa has the lowest inflow of FDI, globally, with her about 3 percent share of global FDI inflows[231]. Even then, Nigeria is more populated than any of the two countries that rank higher than her in FDI attraction. In fact, with the current situation in Nigeria, other African countries like Angola and Ghana are strongly challenging Nigeria in her third place position in FDI attraction and inflows. This is so, especially when it is borne in mind that some investors hitherto operating in Nigeria are leaving the country for these other African countries for better investment climate. It is on record that Shell Petroleum is at present attaching more importance to investing in Angola than in Nigeria while Dunlop

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[227] Ayanwale, A.B. FDI and Economic Growth: Evidence from Nigeria. AERC Research Paper 165, April, 2007, p. 1.
[228] ibid
[229] Ibid at page 12
[230] Ibid at page 10
[231] Anonymous: World Investment Report (Unctad)2006, page 10.

has left Nigeria to Ghana[232]. In 2002, Nigeria was actually ranked along with other 42 countries as an under performer in terms of FDI inward index[233] and the situation has not been significantly altered[234].

With regard to portfolio investment, foreign participation is also low. The country's Net portfolio investment was only N151.6million in 1986. It increased to 4,353.1 million in 1987, but decreased the following year to 2,611.8. From 1989 to 1999, net portfolio investment flow was negative except in 1992 and 1999. This poor performance of portfolio investment has been attributed to absence of an enabling environment[235]. This is not surprising when it is borne in mind that relevant legal regimes and policies had not been particularly favourable to foreign investment. These laws clearly did not help in internationalizing our money and capital markets. This is in addition to poor corporate governance and weak regulatory institutions.

However, with the liberalisation of our capital market in the mid-1990s, there became a change in the naira value of FPI inflows into the country. This can be seen in the level of inflows between 1999-2004. With the recovery of global economies after the global financial meltdown in 2008, there are reports that foreign portfolio investors are returning to the Nigerian capital market.[236]

Low level of foreign investment in the country is generally attributed to lack of an investor-friendly environment. Specifically, it was found that Nigeria lacks some of the determinants of foreign investment inflows, such as infrastructures,

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[232] Editorial, Punch Nwespaper, Monday January 25, 2010, vol.17,No.20570,page 14. Shell Trims its Investment portfolio in Nigeria. Editorial, Punch Newspaper, Vol, 17, No, 20570, Monday, January 25, 2010, page 2.
[233] Bolodeoku, I.O. The Search for Global Capital: What has Privatisation got to do with it, What are the challenges for Nigeria? Journal of Private and Property Law, UNILAG. Vol. 23, pp. 93-118 at p. 95.
[234] Anonymous. Global and Regional FDI Trends in 2010., No. 5, UNCTAD, Geneva,17 January 2011, p.3.
[235] ibid.
[236] Aderinokun, K, and Egene, G. Foreign Investors Dominate Stock Market. MoneyGuide, Thisday Newspaper, vol. 16, No. 5786, Friday, February 25, 2011, p. 64.

security, and skilled labour. In addition, the country is rife with corruption, and weak institutions. These were found to be among the factors that determine the inflow of investment in a given country.

5.3 RECOMMENDATIONS.

5.3.1 Need to Have Priority Areas Where Foreign Investors are most Needed and then Channel their Attention towards them.

It is recommended that the Nigeria's investment laws, such as the Nigerian Investment Promotion Commission Act and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (NIPC Act) be amended. These laws have provisions allowing a foreigner to invest in every type of business in the country except those in the negative list as provided in sections 17 and 31 of the NIPC Act. Consequently, foreigners are seen in Nigeria engaging in such simple economic activities like motor repairing and fast food selling. These are things that should ordinarily be preserved for Nigerians, particularly when it is borne in mind that the country is teeming with hundreds of thousands of unemployed youths.

The amendment being recommended in the case of the NIPC Act shall incorporate provisions that list priority areas where foreign investors are most desired. This can be done by providing a section listing these areas and termed "Priority List" or any of like terms. Conversely, the areas that fall outside the priority areas, though not prohibited from foreign investors, should be less emphasized in the country's foreign-investor drive. However, any foreign investor who is interested in investing outside the "priority list" will be permitted to do so if

he shows evidence that his business will be able to employ a minimum of fifty (50) people. This will have the effect of attracting not just any available foreign investor including those engaged in fast food selling, hair salon, small scale distributive trade, and other types of businesses that can easily be established and managed by Nigerians. In addition, it will ensure that foreign investors who come are those who will in real economic sense contribute to the growth of the economy not just by investing but also by significantly reducing unemployment.

With regard to the provisions of the law, such as the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, which allows unconditional transfer of profits, interest and proceeds of sale or liquidation of an enterprise out of the country, there is also need for amendment. This part of the law should be amended so that a foreign investor must have had his fund invested in the country for at least seven years before he can enjoy such unconditional transfer, otherwise, he can only transfer a maximum of 80% of such profit, dividend or proceeds of sale or liquidation of the enterprise. This is with particular regard to Foreign Direct Investment (FDI).

As to Portfolio investment, the law should be amended so that a foreign investor will not be allowed to repatriate the profits in less than two years of importing and investing the capital. This will have the combined effects of ensuring that the foreign funds imported remain for long enough to be of use to the economy and also check incidence of capital market failure owing to foreign investors liquidating their investments on the slightest hint of distress in the economy.

5.3.2 Need to Adopt a Policy Geared towards Saving the Country's Manufacturing Sector and re-visit the Privatisation and Commercialisation Programme.

As to the issue of allowing foreign products to flood our markets resulting in emasculating our budding industries, the trend can be reversed by restricting importation of goods, especially those that can be manufactured locally.

Further, a policy may be adopted with the goal of improving the nation's manufacturing capacity. This can be by way of assisting the manufacturing sector to grow. It can be done by taking a stock of our manufacturing firms in specific areas like textiles, food beverages, foot wears, wood processing, among others, and assisting a selected number of them (selected based on evidence of viability and good management) not just to produce but also to utilize local raw materials. This assistance should not be only financial, as happened recently in the textile industry, but should include using the nation's diplomatic influence to source expatriates with the relevant technical expertise and the capacity to grow the firms. The government can enter into contracts with these expatriates and pay them for a specified number of years, say five, within which they would have trained indigenous employees of the company and assisted in bringing them back to growth and profitability, after which the contracts will be terminated. This can be done with a set goal in mind, like a gestation period of 15 years within which these industries would have been strong enough to produce for domestic consumption and able to compete with foreign substitutes. In the meantime, fiscal policy, such as imposition of tariffs, can be used to reduce the demand for substitute foreign products in favour of the locally manufactured goods within the gestation period.

As to the privatisation of some of the country's state owned enterprises and commercialisation of others, it is recommended that the government should take a look at the philosophy behind their establishment, particularly that of welfarism. This is the case with such corporations as the Federal Mortgage Bank of Nigeria, the Federal Housing Authority, the various river basin authorities as well as other corporations that provide goods and services that are essential to life. These corporations should neither be privatized nor commercialized owing to the importance of the goods and services they provide to the poverty ridden Nigerian masses.

5.3.3 Need to Reverse the Current Dearth of Foreign Investment in the Country.

As earlier pointed out in this work, there are certain conditions that favour influx of foreign investment in a given economy. It was also said that some of these conditions are not available in Nigeria, resulting in the finding that there is a dearth of foreign investment in the country. Thus, it is recommended that in order to increase the country's share of foreign investment inflow, there is need to do the following:

a. Adoption and Implementation of a Policy of Zero Tolerance to Corruption.

A follow up to the issue of implementation of laws and policies is the need to curtail corruption if not completely eradicated. It is known that Nigeria ranks high in corrupt practices[237]. The government itself recognizes this fact and has enacted laws and adopted policies aimed at the reduction, if not complete eradication of

[237] Corruption Index 2008. In: http://www.transparency.org/publications/gcr.

corrupt practices in the public sector of the economy. Some of these laws and policies include the Independent Corrupt Practices Commission Act, 2000, the Economic and Financial Crimes Commission Act, 2004, the Nigerian Extractive Industries Transparency Initiative Act, 2007, the Fiscal Responsibility Act, 2007 as well as the Due Process Contract Review Mechanism. These laws and policies notwithstanding, Nigeria is still deep in corruption[238].

It goes without saying that investors would likely avoid a country where corruption is rampant as is the case in Nigeria. This is because of the negative effects of corruption both in terms of operating cost and other social ills associated with it. In this regard, it can be said that a strong and clear indication of zero tolerance to corruption by all the levels of governments in the country will enhance the level of foreign investment in the country.

A related issue is the need for diligent implementation of laws and policies by authorities and institutions. It is one thing to enact laws and formulate policies but another thing altogether to have them implemented. Thus, in addition to the enactment of relevant laws, there is also the need to implement the laws, for laws that are not implemented are of little or no use to the society for which they are meant to serve. This is also true for policies as no matter how good a government policy on any issue or sector of the economy may appear, including the incentives that may come with such policies, it will be of little or no use to the economy without due implementation. In fact, lack of implementation of laws and or policies cause disincentive and defeats the set goals associated with them.[239] This point can be shown to be true with the consideration of the recent happenings in the Nigerian financial industry. It is on record that Nigerian Banks have had

[238] N 5.2bn Scam: Ugbane, others have case to answer, says court. Daily Sun, Friday, March 5, 2010, Vol. 6, No. 1691, p.9.
[239] Atufe, Friday, "SEC DG berates NSE as Cassino," In:Fianancial Stanadard, februaury 12, 2010.

problems of failures in the recent past. It happened in the early 1990s necessitating the enactment of the Failed Banks (Recovery of Debts) and other Financial Malpractices in Banks Act, 1994[240].

This Act was enacted to provide for the recovery of debts owed to failed banks and for the trial of offences relating to financial malpractices in banks and other financial institutions[241]. It was also aimed at aiding banking institutions out of the distress they found themselves courtesy of a fall in fiduciary standards respecting their officers, directors, and other insiders. The legislature expected that with the enactment of that law, failure of banks and other financial institutions would cease as banks and their staff would thenceforth conduct their businesses with diligence and in line with the laws and established ethical standards. However, bank failure in Nigeria continued[242]with the latest being the failure of eight banks out of a total of twenty-five in the economy, in 2009. These series of bank failures are not as a result of absence of laws or regulatory authorities; rather, the cause was the inability or failure of the regulatory bodies in carrying out their duties properly and diligently[243].

If the regulatory authorities such as the Central Bank, the Securities and Exchange Commission, amongst others, were doing their jobs properly, such problems and their likes would not be seen in the nation's financial sector[244] as well as in other sectors of the economy. There is no doubt that investors avoid economies with recurrent bank failures.

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[240] Cap F2 L.F.N, 2004.
[241] Ibid, Long Title.
[242] Rescued, healthy banks targeted for acquisition. Financial Punch. In: Punch Newspaper, vol. 17, No. 20570, page 15,January 25, 2010.
[243] Fagbohun,L. op. cit. at 66.
[244] Atufe, Friday, "SEC DG berates NSE as Cassino. Op. cit.

b. Need to Improve Infrastructural Development.

A Country with a high standard of infrastructures would normally attract investors. In Nigeria, infrastructural development is very poor. This is particularly so with regard to power, energy, and transport sector. It is no news that electricity is a major challenge plaguing the Nigerian economy today. Moreover, the energy sector is not in a better shape. In effect, investors have to contend with power failure or complete unavailability of electricity for industrial purposes. Compounding this situation is that even where an investor chooses to make use of alternative power source like electricity generating plant, he has to contend with not only the high cost of production associated with such choice of action but also the fact of unavailability of fuel, whether in the form of diesel or petrol. Currently, diesel sells at about N200.00 a litre as against the official price of N90.00. one of the consequences of this is that goods produced in Nigeria would not be able to compete favourably with goods produced elsewhere, at least with regard to price. Apart from cost associated with power, transportation also plays very important role in distribution of goods and provision of services. In Nigeria, with roads as death traps and a comatose rail system, the average investor will be cautious to invest in the economy.

In all these, one sees an economy that is not investor-friendly. Irrespective of whatever legislation and tax incentive package the government might put in place. Investors would prefer to be producing their goods in a more investor-friendly economy and export them to Nigeria, a very large market. This is more so when it is borne in mind that there is trade liberalisation as prescribed by the World Trade Organisation and the International Monetary Fund to which Nigeria is a known active member.

c. Need to Encourage Corporate Bodies to Practice a Culture of Good Corporate Governance.

Globalisation demands that corporations meet international standards which protect investors, maintain their confidence by entrenching and enforcing transparency and good governance[245].

It is said that the global market which has developed due to advances in information technology means that major investors are international, seeking high standards of governance and common and consistent standard of financial reporting. Unfortunately, the level of corporate governance which exists in Nigeria is unsatisfactory, with investors viewing Nigerian Companies as failing in the areas of disclosure, transparency and explanation of corporate policies and actions to shareholders[246] as well as the public. The recent bank failure and the associated revelations of how bank chief executives fraudulently enriched themselves at the expense of their banks readily come to mind. More pathetic was the practice of these banks and their auditors in reporting huge profits running into billions of Naira, while in actual fact, they were incurring huge losses. It is clear that these acts scare away foreign investors especially, portfolio investors. In fact, according to the Director-General of the Securities and Exchange Commission, Arunma Oteh[247], while effective governance is the key to well-functioning capital markets, the Nigeria capital market had in the last few years been characterized by

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[245] Igwe, J. U. K. Business-Government Relations in Nigeria. Law Development, Research, Publications and Consultancy, Lagos, 2002. page 1.

[246] Akinjide-Balogun, J. New Approach to Corporate Governance: (1999) MPJFIL,Vol3 No.3 pages 423-440 at page 423.

[247] Atufe, Friday, "SEC DG berates NSE as Cassino. Op. cit.

governance weaknesses that had led to improper behavior with sharp practices such as insider dealing and share price manipulation[248].

The cumulative effect of these sharp practices was that discerning investors decided to divest at the same time, leading to heavy glut and the attendant large-scale depression in the value of stocks[249]. What this shows is that investors are not comfortable with a stock market that is lacking in integrity and does nothing in the face of glaring failure of corporate governance and abuse of corporate responsibility. Therefore, an economy that is serious in her quest for investment whether foreign or domestic should ensure that corporate bodies operating within the economy adheres to the tenets of good corporate governance.

d. Need for the Country to Aggressively Pursue Human Capital Development.

By human capital development, we mean the level of the availability of qualitative workforce in an economy. It is the quality of education available in a country for the bulk of her citizens who would normally provide the workforce for her economy. Nigeria is currently experiencing challenges in this area, regardless of the fact that there are more than 50 Universities and Polytechnics in the country. These institutions, however, for some time now have not been reputed for producing high quality graduates. In simple language, standard of education in Nigeria is very low. This is more so when it is borne in mind that less than five percent of the secondary school students who in the recent past sat for the National Examination Council (NECO) conducted Senior School Certificate Examinations

[248] Ibid.
[249] Ibid.

passed enough to have the minimum qualification for entry into the University[250], yet, this examination is what the students, presumably, spent six years preparing for in one way or another. This poor quality of education in the secondary schools is a carryover from the primary schools and it spills over to the Universities and other Tertiary Institutions where students spend more time at home than in school during their school years owing to industrial strikes in the sub-sector. In the end, the result is that Nigeria has very many unemployable graduates thereby being in short of skilled labour force. It costs investors money and other resources to re-train fresh employees and as such, serious employers (investors) would avoid investing in an economy that would make them spend more on fresh employees in the name training them in what they should ordinarily know by virtue of their professed education and certificates.

Thus, it will enhance the country's share of foreign investment as well as infuse confidence in domestic investors if the country's education is improved to international standard.

e. Need to Improve Security in the Country.

Ordinarily, an investor would like to be reasonably assured of the security of his life and investment. It is obvious that an investor has to be alive for him to invest. In Nigeria, the issue of security of lives and property has become a serious challenge to the government. It is granted that every economy has its own share of criminals but it must also be said that the ability of the state to investigate crimes, arrest and successfully prosecute criminals has to be taken into consideration by any serious minded investor. It is not to the credit of Nigeria as a country that the

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[250] NECO records 98% failure in Nov/Dec 2009 results. The Nation Newspaper. Vol.5, No.1335,Wednesday, March17, 2010 page 5. See also Olatunji Bukola. Minister Laments Low Standard of Education. In: Thisday Newspaper, Vol.15, No.5430, Friday, March 5, 2010, page 9.

police and other security agents are hardly able to resolve cases of killings, kidnappings and other forms of crime that are plaguing the country today. In the Niger Delta for instance, where Oil and Gas exploration is carried out, one hears about the kidnap of one expatriate or another. In fact, the kidnappings have been extended to non foreigners and it does not appear that the security agencies have an answer to it. This is distinct from the destruction of oil installations in the region by militants who have been clamouring for a better deal by the government of the federation in favour of the indigenous peoples of the oil rich Delta. It is recognized that the government's offer of Amnesty to the militants in exchange for their cessation of armed struggle is yielding positive result, except for the recent bombings of the venue for post amnesty talk organized by the Vanguard Newspaper on the 15th March, 2010[251] as well as that which took place on 1st October, 2010 at the Independence Anniversary celebration at Abuja, where not less than 10 people reportedly lost their lives.

Apart from the insecurity posed by the militants and other criminals like Armed robbers, assassinators, swindlers amongst others, there are also the issues of religious and ethnic conflicts in the country. There have been several such crises[252] in several parts of the country, in the recent past. In fact with the recent upsurge in violence by members of Boko haram religious group culminating in the bombing

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[251] O'Neil Shola, Ologun Sanni and Aiwere Okungbowa: Exodus of ex-militants as bomb probe begins. In:The Nation Newspaper, Vol. 5, No. 1335, Wednesday, March 17, 2010., page1. See also Olaniyi, Bisi. Niger Delta militants attack Shell's facility in Rivers state, resume armed struggle. In: The Nation on Sunday, vol.04, No. 1297, February7, 2010, page 8. See also Olaniyi Bisi. Yar'Adua's illness: Militants strike oil pipelines over delay on demands. In: The Nation on Sunday, Vol.04, No,1248, December 20, 2009, page 51.

[252] Alli Yusuf. Jos Crisis: 150 corpses found in village wells. In: The Nation on Sunday Vol. 04, No, 1283, January 24, 2010 page 8. See also Olawale Taiwo. Jos: From Tin City to Massacre City. In: Thisday Newspaper Vol.15, No.5433, Monday, March 8, 2010, page 3.

of the police headquarters at Abuja on 16th June, 2011, the situation has indeed become more frightening. This situation certainly does not encourage investors.[253]

[253] Alli, Yusuf. Jos crises: 150 corpses found in village wells. In: The Nation on Sunday, January 24, 2010, Vol. 04, No. 1283, p. 8. See also Okara, Val. Judge, Magistrate Kidnapped, Unizik Deputy Vice Chancellor, another too. In: Daily Sun, Wednsday, March 3, 2010, Vol.6 No. 1689, p. 9. See also Akpan-Obong, Patience. So, he's eating meat now! (2). In: Punch, Saturday, March 20, 2010, Vol. 643, No. 1473. The Article discusses an armed robbery incident on Lagos-Benin Expressway where 19 people were killed.

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